Lawmaking and Adjudication in Archaic Greece

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To Elif

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Preface and Acknowledgments

Every history book is a product of its age. The choice of subject-matter and theoretical foundations of our books are as important as the evidence we use to support our arguments, even if we think that we are not being 'theoretical' at all. This is plainly evident from the fact that over the past half-century (and in many cases, long before that), widely divergent interpretations of the history and literature of the Greco-Roman world have been propagated that are based, in most cases, on an essentially fixed corpus of primary evidence. I am a firm believer that, since all scholarship is informed and largely defined by some form of theory and a set of pre-conceptions, it will be far more conducive to the advancement of scholarly discourse if we explicitly acknowledge and discuss our epistemological foundations instead of sweeping them under the carpet in silence. In this spirit, Chapter I adopts a format and tone that might appear polemical to some. It is not meant to be; I wish only to make clear to the reader where this study is coming from, why, in my opinion, it was worth writing it, and how its interpretative framework differs from that of other books on the laws and legal systems of archaic Greece. The methodology that informs most of the book is then assumed for the rest of the chapters, without however being expounded as openly as in Chapter I. In other words, Chapter I is an author's guide to how the book should be read. On the other hand, I am very much aware of the fact that even if a reader adopts this particular reading of the *book*, it will not necessarily commit him/her to a similar reading of all the *evidence* on archaic law. Yet if the book provokes readers to think about archaic law in a different way (not necessarily in the way I suggest here), and stimulates some scholarly debate, then this endeavour will have been successful.

For the sake of convenience, I have chosen to present and discuss most of the evidence in roughly chronological order, as far as possible. There is nothing teleological implied in this choice; it is predicated on the working hypothesis that, as conditions of life change over time, so do perceptions and practices of law. Wider historical developments are noted when

relevant to the issues discussed and in order to provide a context (again, to the extent that this is possible) within which to interpret the evidence for law. At the same time, discussion along thematic lines takes centre stage in many parts of the book, allowing patterns of legal behaviour to emerge more clearly. In general, I have discussed more technical issues, related to method or particular historical and epigraphic problems, in the notes.

With particular reference to fragmentary inscriptions, restorations are often contentious and for that reason I have tried, besides quoting the relevant texts and alerting the reader to problems, to provide references to easily accessible editions (whenever available). I have also tried to translate or faithfully paraphrase all the ancient texts I quote, although, as many who have written on this topic know all too well, this proved particularly problematic with extant written laws. This is because such texts contain a significant number of terms of contested etymology and meaning; again, in such instances I have tried to discuss (if I thought it relevant to my arguments) the issue of semantics, mostly in the notes and in the Appendix, or at least to give the reader some bibliographical assistance in order to pursue the matter further.

Greek authors are abbreviated according to H.G. Liddell, R. Scott and H.S. Jones, *A Greek-English Lexicon*[9], Oxford 1996, and periodicals according to *L'Année philologique*. Titles of periodicals that are not catalogued in *L'Année philologique* are left unabbreviated. All dates before 1000 are BC unless otherwise noted. Finally, I have tried to transliterate in a way that will be least confusing to the reader, while at the same time avoiding being grossly inconsistent.

Research and writing for the book was conducted in places as distant and diverse as Athens, Cambridge, Seattle and Taipei. Besides the intellectually stimulating environment that research libraries in these and several other locations have provided, the cultural diversity of my surroundings also served as a useful reminder of the plurality of ways in which people all over the world understand and interact with the law. During this period of research and writing I accumulated many debts, and it is a pleasure to acknowledge them here. First and foremost, I owe thanks to two great teachers, Carol Thomas and Paul Cartledge, who read the entire typescript and provided valuable feedback and guidance, not only on this occasion but throughout my studies. Other friends and colleagues read drafts of chapters, discussed matters of archaic law with me or provided practical assistance and encouragement. Special thanks are due to Angelos Chaniotis, who read and provided incisive comments on drafts of Chapters III, IV and V and shared some of his unpublished work with me; to Anna Missiou, who read

and commented on an earlier draft of parts of Chapter IV; to Lene Rubinstein, who kindly provided me with a copy of her forthcoming article on *arai* in Greek laws; to Aikaterini Mandalaki, who gave me a copy of her monograph on archaic and classical Gortyn; to Karen Rørby Kristensen, who discussed with me issues of orality, written law and literacy in archaic and classical Crete; to Edward Harris, for his support and encouragement; to Craig Cooper and Alberto Maffi, editors of the *Ancient History Bulletin* and *Dike* respectively, who allowed me to reproduce material published as Papakonstantinou 2002 and 2004; and finally, to all the audiences at conferences and job talks where parts of this book were presented as well as to all the friends and colleagues in Europe and North America who heard and discussed with me issues related to this book and archaic Greece in general. It goes without saying that, even though I benefited from the knowledge and advice of all the above, they bear no responsibility for the contents of this book.

Above all, my deepest thanks and gratitude are to due to my wife Elif, to whom this book is dedicated, and to my parents Konstantinos and Chrysanthi. Without their constant love and support I would have never been able to write this book.

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Abbreviations

In addition to the abbreviations of periodicals and ancient authors (see Preface), the following abbreviations are also used in the text and notes:

DNP = Der Neue Pauly: Enzyklopädie der Antike, Stuttgart 1996-2003.
Et. Thas. = Études Thasiennes, Paris 1944-.
FGrHist = F. Jacoby, *Die Fragmente der griechischen Historiker*, Leiden 1923-.
GIBM = The Collection of Ancient Greek Inscriptions in the British Museum, vols I-IV, Oxford 1874-1916.
IC = M. Guarducci, *Inscriptiones Creticae*, vols I-IV, Rome 1935-50.
IEphesos = H. Wankel, R. Merkelbach et al., *Die Inschriften von Ephesos*, vols I-VII, Bonn 1979-81.
IG = Inscriptiones Graecae, Berlin 1873-.
IGT = R. Koerner, *Inschriftliche Gesetzestexte der frühen griechischen Polis*, Köln 1993 (edition completed by K. Hallof; numerals refer to inscription numbers unless otherwise noted).
IvEr = H. Engelmann & R. Merkelbach, *Die Inschriften von Erythrai und Klazomenai*, vols I-II, Bonn 1972-3.
IvO = W. Dittenberger & K. Purgold, *Die Inschriften von Olympia. Olympia: Die Ergebnisse der von dem deutschen Reich veranstalteten Ausgrabung*, Berlin 1896.
LSJ = H.G. Liddell, R. Scott & H.S. Jones, *A Greek-English Lexicon. with a Revised Supplement* [9], Oxford 1996.
Merkelbach-West = R. Merkelbach & M.L. West (eds), *Fragmenta Hesiodea*, Oxford 1967.
ML = R. Meiggs & D. Lewis, *A Selection of Greek Historical Inscriptions*[2], Oxford 1988.
Nomima I & II = H. van Effenterre & F. Ruzé, Nomima. *Recueil d'inscriptions politiques et juridiques de l'archaïsme grec*, vols I-II,

Rome 1994-5 (numerals refer to inscription numbers unless otherwise noted).

PGM = K. Preisendanz et al. (eds), *Papyri Graecae Magicae: Die griechischen Zauberpapyri* [2], Stuttgart 1973-4.

RE = *Realencyclopädie der classischen Altertumswissenschaft*, Stuttgart 1893-1978.

SEG = *Supplementum Epigraphicum Graecum*, Amsterdam 1923-present (references by volume, entry).

SGDI = H. Collitz & F. Bechtel (eds), *Sammlung der griechischen Dialektinschriften*, Göttingen 1884-1915.

I

Greek Law and Greek Laws

In one of the best known episodes in the mythical and adventurous story of his return to Ithaca, Odysseus and his companions find themselves in the island of the one-eyed monsters, the Cyclopes. Besides their ghastly appearance, supernatural stature and strength, the Cyclopes appear to Odysseus especially recalcitrant due to several characteristics of their social organization (*Od*. 9.105-15):

> Then we sailed on, grieved at heart
> and we came to the land of the Cyclopes, an overweening and
> lawless folk (ὑπερφίαλων ἀθεμίστων)
> who, trusting in the immortal gods,
> plant nothing with their hands nor plough
> but all these things spring up for them without sowing or
> ploughing,
> wheat, barley and vines, which bear
> the rich clusters of wine, and the rain of Zeus gives them growth.
> Neither deliberative assemblies (ἀγοραὶ βουληφόροι) they have,
> nor established laws (θέμιστες),
> but they dwell on the peaks of lofty mountains
> in hollow caves, and each one is lawgiver to his children and
> wives (θεμιστεύει δὲ ἕκαστος παίδων ἠδ᾽ ἀλόχων),
> and they care nothing of one another.[1]

For Homer and his audience, law is a universal feature of social life. Human communities invariably need some form of law, norms or regulations to maintain social peace. The community of the Cyclopes is for early archaic[2] Greeks the antithesis of a functional human society, devoid of political assemblies (ἀγοραὶ βουληφόροι), laws (θέμιστες), established legal procedures (θεμιστεύει δὲ ἕκαστος) and community support mechanisms (οὐδ᾽ ἀλλήλων ἀλέγουσιν). Comparable ideas are commonplace in archaic and classical Greek literature. For Hesiod, what

distinguishes humans and beasts is *dikē*:[3] animals, fish and birds eat one another because they lack *dikē*. 'But to people he [i.e. Zeus] gave *dikē*, which is by far the best thing' (ἀνθρώποισι δ' ἔδωκε δίκην, ἢ πολλὸν ἀρίστη γίγνεται, *Op*. 279-80). Similarly Herodotus (4.106), an author who composed his work in the fifth century but largely records conditions and events of the archaic era, refers to the *androphagoi* ('cannibals'), a folk that 'have the most savage customs (ἤθεα) of all men, for they pay no regard to justice nor make use of any established laws (οὔτε δίκην νομίζοντες οὔτε νόμῳ οὐδενὶ χρεώμενοι) ... and are the only ones that eat human flesh'. The *androphagoi* are so remarkable because, like the Cyclopes, they are so removed from normal patterns of human existence. All these passages strongly suggest the importance that most Greeks in the archaic and classical periods ascribed to law and the administration of justice. For the Greeks, law was a cornerstone of social and political organization, the very antithesis of savagery. And if further confirmation of the importance of law in archaic Greece is needed, one need look no further than the hundreds of extant written laws, engraved in imperishable material and publicly displayed since at least the seventh century BC.

All this may sound self-evident, even clichéd. After all, who does not need law? And yet the issue is not as straightforward as it seems, especially when attempting to reconstruct and interpret the legal systems of pre-modern societies, such as the ones documented for archaic Greece. To begin with, there is currently a feeling that, at least in epistemological terms, the study of archaic Greek law is at a critical crossroads. Primary evidence has been extensively, some would say exhaustively, discussed, and one can reasonably expect that there will be very few substantial additions to the present corpus in the foreseeable future.[4] At the same time all students of archaic law, and indeed of any pre-modern legal system, are facing important challenges. First, there is the issue of contemporary preconceptions and misconceptions regarding the role and status of law within pre-modern societies. For over two centuries the structure of modern legal systems, including the application of law in the courts, has been predicated on some fundamental principles, such as the identification of the institutions representing the nation-state as the sole sources of law (legal monism). But in recent decades the value of such venerable principles has been seriously challenged and subsequently undermined, for they have proved inadequate to account fully for the conditions and complexities of both modern and, in terms of scholarly study, pre-modern societies. Given this state of affairs, there is an increased awareness among many researchers that widespread modern beliefs about law and justice that are,

at times unwittingly, employed in the study of ancient Greek law must be directly confronted and questioned.

Then there is the related issue of method. For more than a century the study of Greek law has been largely characterized by an adherence to strict antiquarianism with little concern for understanding the social and historical dynamics of law. In recent decades the situation has changed, and in addition to having to come to grips with our own modern preconceptions about law, it appears that increasingly many students of ancient Greek law have come to the realization that they cannot afford to ignore developments in related fields such as legal anthropology and cultural legal studies. The last point is particularly germane to the study of the legal systems of the archaic period, the chronological focus of the present study. During the last twenty years we have witnessed the publication of numerous studies dealing with classical Athenian law which fruitfully and constructively utilize methodologies developed in cognate disciplines.[5] Yet the study of archaic law remains largely impervious to recent methodological advances.[6]

To my mind both of these issues – i.e. the critical re-examination of our modern western preconceptions on the role of law in human society and the need to create new models of interpretation by constructively grafting materials and methodologies borrowed from related disciplines onto our current discourses on archaic law – should be at the forefront of any major endeavour to reassess the interaction between law and social systems in archaic Greece. The remainder of this introductory chapter will provide a synopsis of the chapters to come, paying particular attention to the novel contributions to the debate on archaic Greek law that this monograph makes. It will also explore a number of issues expounded in greater detail in other parts of the book. Moving beyond some deeply embedded methodological constraints, but without discarding other advances made in the recent study of Greek law, such preliminary analysis aims to address a range of topics from a constructive angle while at the same time setting the tone and clarifying the approach that informs the rest of the book. I begin by providing a brief survey of the history of scholarship on Greek law in the context of developments in the wider field of legal studies and the effect and limitations that these scholarly developments have created for our understanding (or misunderstanding) of archaic Greek law. Following this I proceed to offer some reflections on alternative thematic and methodological possibilities and directions that the study of archaic Greek law might pursue. Staying true to my word, I attempt to take up some of these challenges in the main body of the book.

The chapter concludes with a probe of two issues that have special relevance to the study of law in archaic Greece. One of these is well-worn but still contentious, while the other has only recently come to the forefront of scholarly debate: the 'unity' of Greek law and the relationship between a legal system and everyday life respectively. Underlying most of the issues discussed throughout the book is the relationship between law and everyday life in archaic Greece. Indeed, this book aims in part to document and analyse several manifestations of the interaction between the legal and the quotidian in the context of the archaic Greek communities. Regarding the unity of Greek law, a topic that has attracted the attention of Greek legal historians for decades, I hope that it will become clear in the following pages that this issue is also of great relevance to the questions raised and discussed throughout this study.

Law and the everyday

In 1989 David Cohen, one of the most recognizable names in the field of Greek law, published a review article on the state of scholarly research on Greek law in which he lamented, among other issues, 'the purely descriptive level' of relevant scholarship 'operating in a world seemingly hermetically sealed against outside developments'.[7] A few years later in their introduction to the collective volume entitled *Greek Law in its Political Setting*, published in 1997, L. Foxhall and A.D.E. Lewis openly expressed their dissatisfaction with the 'formalist and evolutionist approaches' that have for decades dominated the study of Greek law.[8] Ten years later one can hardly claim that the situation has radically changed. These assertions enunciated by eminent scholars of Greek law seem an apt starting point for our investigation of the epistemological underpinnings of Greek legal studies and the interrelationship between law and the quotidian. There is little doubt that the above mentioned scholars were reacting against the old and firmly established scholarly traditions of legal empiricism, positivism and realism. During the twentieth century these traditions have dominated the study of modern legal systems of Europe and north America and have had an undue but formative influence on the study of ancient, including Greek, law.

It has been recognized by many legal theorists that the approaches based on legal positivism and realism have a restricted analytical scope, in part because of their assumptions concerning the interpretive value of certain kinds of observations, namely regarding the behaviour of formal legal actors, social forces and institutions. Hence in the context of positivist and

empiricist legal scholarship, law is viewed as a sphere of life separate from the social and the cultural. Law is transcendent and reified. Moreover, the interaction between law, society and culture is unidirectional: law, by its hegemonic presence and normative power and through the verdicts of the courts, informs and enforces values and practices.[9] Hence law's primary function is, according to this view, permeated by an instrumentalist ideal: to achieve social peace and to balance conflicting interests through the application of statutory norms. This perception of law is epitomized in modern times by a fallacious belief in the independence of the judiciary, alongside the legislative and the executive, as the three cornerstones of the modern nation-state, as well as by the ideology of the 'Rule of Law'. This is the belief that 'The Law' is an omnipotent and autonomous sphere of human praxis above personal and social interests, a belief that is almost universally espoused by citizens of modern nation-states and which, as we shall soon see, has had a great impact on the thinking of most historians of ancient law.

Such ideas regarding the role of law in human societies became in the twentieth century so widespread and embedded in legal academia and popular culture that they eventually came to be acknowledged as an almost universal truth about the nature of law, at least in western industrialized countries. In particular during the early twentieth century, legal empiricists and realists who represented the academic establishment of legal studies entered into an alliance with practitioners of the fledging social sciences, especially sociology. This convergence of legal studies and sociology led to the emergence of a new type of quantitative legal empiricism. Scholarly emphasis now shifted to statistical analysis and the close association between law and the operational structures of modern nation-states. These developments brought law to the forefront of nation-state policy-making and established legal empiricism and realism as the dominant orthodoxies in legal studies for the greatest part of the twentieth century.

It was within such an intellectual climate that the academic study of Greek law largely emerged. In the academic establishment of the last century the scholarly study of ancient law was almost always synonymous with the study of Roman law, which scholars rightly perceived as the legitimate antecedent of modern western legal systems. Thus scholars frequently viewed Greek law as a misfit in the progression from ancient law to modern common and civil legal systems.[10] In his famous *Ancient Law*, a book that exemplified the evolutionist approach in legal history and which has been seminal for scholars working in this tradition even to the present day, Henry Sumner Maine could claim that

> The Greek intellect, with all its nobility and elasticity, *was quite unable to confine itself within the strait waistcoat of a legal formula* ... A community which never hesitated to relax rules of written law whenever they stood in the way of an ideally perfect decision on the facts of particular cases, would only, if it bequeathed any body of judicial principles to posterity, bequeath one consisting of the ideas of right and wrong which happened to be prevalent at the time. *Such a jurisprudence would contain no framework to which the more advanced conceptions of subsequent ages could be fitted*.[11] (emphasis added).

Such evolutionist and anachronistic assessments were not uncommon in the early days of the study of Greek legal systems, especially among scholars with a legal background.

It is also quite revealing that many of the most influential scholars in the study of Greek law during the early twentieth century were lawyers as well as classicists by training and taught in law schools as well as in classics departments.[12] A good number of these scholars published extensively in both Greek and Roman law and, even more importantly, some held university chairs in Roman law,[13] a situation indicative of the inferior academic status of Greek law. As a result of this favouritism towards Roman law, the study of Greek law became largely marginalized. With the exception of classical Athens and the Gortyn Law Code, statutes and legal systems of other parts of the Greek world had until quite recently attracted only minimal scholarly attention. It was in this context that the early generation of scholars working on Greek law produced the first analytical monographs and systematic compilations of materials and set the agenda for the subject, an agenda that overwhelmingly and unquestionably informs most work on Greek, and especially archaic, law even today.

In this intellectual tradition law is, as we have already pointed out, usually viewed as an integral part of the state apparatus, i.e. it is conducive to the way a state operates. It was thus fashionable for legal scholars of the twentieth century, and by extension for many historians of Greek law trained in this tradition, to identify and classify features of legal norms and procedure, compare them with enacted laws of other states and examine possible ways of improving the legal system and thus making it more functional. Such empirical and functionalist approaches reflect accurately most of the early, and still some of the recent, scholarship on Greek law. Books on Greek law, especially those written before the 1980s, often

describe in painstaking detail normative aspects of legal rules, classify them according to modern categories (e.g. criminal or commercial law) and situate them in the context of the constitutional evolution of the Greek *polis*.[14] Furthermore, it is no accident that scholars originating from countries with common law traditions focus mostly on procedure and the workings of the courts,[15] whereas scholars from civil law countries place more emphasis on substantive law and wider doctrinal issues. All in all, the legacy of such scholarly precedents has proved particularly enduring even in recent years.[16]

Taking such programmatic remarks as a starting-point, we can proceed to ask what alternative directions could the study of archaic law take? Is it indispensable that we continue to view law strictly as part of a state apparatus?[17] Can law, broadly conceived (e.g. written statutes, formal litigation, literary sources that relate tales of legal experience) be used to illuminate the ordinary and quotidian features of legal systems and help us reconstruct other aspects of the social and cultural history of archaic Greece? And are these two perceptions of law, i.e. as an integral part of the state apparatus and as a vital component of everyday life, essentially antithetical and irreconcilable? If we accept that law is an integral part of the everyday, on what level could we argue that law and the everyday interact and how did this interaction affect both the law and the lives of ordinary Greeks in communities across archaic Greece? These are some of the questions that this monograph attempts to raise, explore and, at least as far as the sources allow, answer.

This book starts from the premise that what we call 'the law' comprises not only formally enacted legal norms (including laws dealing with the regulation of widely defined and repeatedly occurring issues, or decrees and contracts providing for particular matters; see discussion in Chapter III) and the administration of justice in the courts but also lay interpretations and practices that often challenge, negotiate, and reshape the more formal and state-bound manifestations of a legal system.[18] In other words, law is not a mandarin text but a protean entity that articulates a number of different social discourses. This interrelationship between formal law and everyday practices and ideas is at the heart of a burgeoning research agenda in cultural legal studies.[19] Comprehensive surveys and specific case studies within this tradition have yielded revealing insights and valuable analytical tools that have so far been used only marginally in the study of Greek law. At stake is how ordinary participants in a legal system, or even interested outsiders, conceive and cope with the law of their community in accordance or in conflict with their values and moral beliefs and in

pursuance of personal interests. Such a micro-level, personalized view of the impact of law on everyday life is, I believe, eminently suitable for ancient Greece, from which both formally enacted legislation and personal stories of individuals who actively engaged with the law do survive (for the archaic period, Hesiod, Solon and Theognis are the most prominent). Broadly speaking, Greek statutes concern themselves with crimes and torts but also with such diverse matters as family, property, trade, religion, and politics. Once these statutes materialized in the courts of justice and affected the lives of ordinary Greeks, we can argue that rigid legal norms have crossed over to the ordinary and everyday. As Foxhall and Lewis put it with regard to ancient Athens,[20] 'it is hard to draw firm lines between the settlement of cases in court and the spillover of legal actions into the agora, the streets, the fields, and the houses of Attica'. I believe that such an assertion could be considered as a suitable and valid description of conditions in other parts of the Greek world as well.

Furthermore, it should be emphasized that law's impact on everyday settings is hardly unidirectional. While statutes and judicial decisions undoubtedly have an effect on society, often these laws are themselves the fruit of social strife and negotiation. As Starr and Collier have argued, statutes and legal systems should be seen 'as arising from particular historical negotiations between and among groups, or as resulting from particular systems of hierarchy and domination'.[21] Law, in other words, is both a constituent and constitutive of social relations, especially when, as is the case in many communities of archaic Greece, laws are enacted by communal, deliberative action. It is therefore largely misleading to refer to the 'Rule of Law'[22] and other such catch-phrases that imply an unchallenged dominance of an independent entity identified as 'the law' without acknowledging the import that lay legal actors bring to the contents and orientation of the law (in its broader definition suggested above).[23] I want to emphasize at this point that I do not doubt the evidentiary basis of many of the arguments developed by modern scholars (see n. 22) regarding the 'rule of law' in ancient Greece. It is clear that some Greeks believed that they were ruled by law and that the 'rule of law' was a token of a stable constitutional order. Perhaps one of the most famous, if extreme, manifestations of this perception is the declaration by Demaratus (Hdt. 7.104.4-5)[24] that *nomos* was the only *despotēs* of the Spartans. But by the same token it is fair to say that such perceptions were not universally espoused. Hence other Greeks challenged the application of legal norms in what was perceived as a perversion of justice in the courts and everyday life of their cities (e.g. Hesiod and Theognis). Moreover, as comparative

research has demonstrated,[25] individuals, contrary to what they might believe, always negotiate and transform law in informal, everyday settings even when they think that they are completely dominated by it. One is therefore forced to conclude that sweeping statements regarding the power and importance of law, like that attributed to Demaratus, should not be considered as proof of the existence of a legal domain independent from the political and the social. As a result, the modern tendency almost uncritically[26] to perpetuate the myth of a dominant and independent domain of law at the expense of alternative perceptions of law and justice should be avoided. Instead, I argue that it behoves us, as historians of Greek law, to map the different manifestations of the constant engagement between law and the quotidian and attempt to discover what this interaction can reveal about archaic Greek societies and cultures at large.

This book is especially concerned with two aspects of the interaction between archaic law and everyday life, namely lawmaking and adjudication. Our analysis begins with a probe of the earliest evidence for Greek law in the archaic period (Homer, Hesiod and the earliest legal inscriptions). This set of evidence presents the first instances of Greek statutory legislation, adjudication and jurisprudence. In Chapter II it is argued that the emergence of law (not necessarily written) as a contentious social category is a process of paramount importance with considerable social consequences. Starting in early archaic Greece,[27] two superficially contradictory manifestations of law emerge: one as an omnipresent and magisterial force and one as a site of social negotiation and contestation. The image of law as divinely endowed, encountered in Homer and Hesiod and other archaic sources, is associated with an aristocratic set of values and a model of social organization according to which social elites effectively controlled the legal apparatus and administered justice more or less at their whim. As far as one can tell, in the communities of early archaic Greece the formal aspects (e.g. judiciary) of the administration of justice were indeed largely controlled by the aristocracy (e.g. the elders in Homer and the *basileis* in Hesiod) but, as the case of Hesiod demonstrates, there also existed alternative categories of legal perception and praxis. The public character of lawmaking[28] and adjudication[29] contributed to the creation of alternative conceptualizations of what law meant for society at large. Archaic sources that deal extensively with the impact of legal norms in everyday life (Hesiod, Theognis) demonstrate the diverse and often partisan reception of statutes and court decisions.

The examination of legal matters in Homer and Hesiod serves as a useful reminder that law is never created in a social and political vacuum, even

when it purports to be so. Once we accept as valid the assertion that law does not simply exist on an empyrean level, dictating, through its incorporation in a state apparatus, rules and regulations that govern human life, but that it is actually an integral part of social structures and struggles, then we must also accept that there is no such thing as impartial law. Formal lawmaking procedures are essential in articulating the social and ideological negotiation or even conflict (as in the case of Solonian Athens) that often accompanies the emergence of law. The power to draft and enact legislation is of fundamental significance for the members of every community, except perhaps in extreme totalitarian regimes. It would be difficult of course to argue that law is always a direct expression of the interests and goals of a single social group (e.g. the aristocracy or the *dēmos*). The promulgation of law should be rather seen as a compromise of several, often conflicting, interests and strategies within the archaic *polis*. Archaic written laws provide some interesting illustrations of this state of affairs. Chapter III explores how legislative power was articulated in archaic Greece and considers some of the implications of lawmaking procedures for the political and social structures of archaic communities. Although it is evident that law-enacting procedures could differ widely from city to city, a review of the evidence suggests that several social groups and/or civic authorities could often be involved in the formulation and enactment of a particular law. Such features of archaic law bespeak the social and ideological bargaining involved in the process of lawmaking. Commonplace and aristocratic perceptions of law and social life, expressed in institutional and informal settings, had a bearing on the creation of law. As a result, law articulated and promoted the interests of differing social groups within the archaic *poleis*. In turn, social relationships and class interests were frequently conditioned by statutory norms. Hence on different occasions laws could be used as means either to mediate class conflict, or to advance aristocratic interests in the context of elite factional politics, or to promote the concerns of the *dēmos* and stimulate further popular demands towards egalitarianism.

Formal adjudication in the courts and other forms of dispute settlement (i.e. out-of-court arbitration)[30] also constitute major stages in the ongoing negotiation between law and the quotidian. Individuals have their own ideas and interpretations of the law, often self-contradictory as the case of Hesiod demonstrates (Chapter II), even when they have no direct dealings with it. These perceptions are shaped empirically by a number of factors, and this phenomenon is especially accentuated in small face-to-face oral societies, such as the communities of archaic and classical Greece, where

adjudication was conducted in public and was open to various informal influences. Hence, when popular perceptions of law and justice clash with judicial procedures, the result is further permutations in the texture of the law as it is perceived, formally enacted and implemented. In other words, constant interaction between everyday legal experiences and statutory law can generate a shift in the citizens' perception of the role and status of law in their society, prompt the creation of new practical strategies to deal successfully with it,[31] and in the long run could also provoke statutory change. New legislation can then engineer new perceptions and create the need for the adoption of new strategies in a never-ending process. Employing primarily the evidence of extant archaic written laws, Chapters IV and V probe aspects of this interplay between the legal system and lay perceptions and strategies of dealing with the law as deployed in the courts of several Greek communities. Moreover, a detailed examination of procedures and other practices in judicial contexts further reveals how law worked in action.

The process of enforcing statutory law either in the lawcourts or in informal quotidian settings has never been straightforward. Chapter IV also investigates in more detail the composition of the archaic Greek judiciary, an issue that, comparable to the issue of lawmaking examined in Chapter III, provides insights into the social attributes of law and especially on the hegemonic and resistant discourses created by law in the archaic *poleis*. An overview of the sources suggests that the political and social elite largely controlled the judiciary, although there is some evidence for popular courts in archaic Greece.[32] However, as the analysis in Chapter V demonstrates, judicial procedures were often abused by judges, court officials and other civic magistrates.[33] In addition, an examination of the evidence regarding legal oaths reveals that often litigants could also resist, abuse and manipulate the letter of the law in court through perjury and other legalistic ploys.[34] Archaic literary sources, as well as the rich epigraphic record, provide sufficient evidence for the exploitation of law by litigants in archaic Greece. Therefore it is argued that control of lawmaking procedures and the judiciary could not necessarily guarantee a universal interpretation and smooth application of statutory law on the everyday level. Judicial procedures and by extension legal verdicts could be manipulated as the need arose to promote personal or class interests.

In order to appreciate fully the effects of the interrelationship between everyday life and the law, it is always preferable to examine case-studies of personal encounters with the legal establishment. For the case of archaic Greece we are fortunate to possess such personal stories by individuals (e.g.

Hesiod, Solon, Theognis) who indirectly articulate aspects of their experiences with the law of their community and expound their understandings of the law's position in society. Chapters II and especially V examine in detail the evidence provided by some of these first-hand accounts in the context of the conclusions reached in other chapters. Literary sources confirm the versatile nature of archaic Greek law and judiciary and reflect the range of its complexity. Archaic Greeks perceived law and the administration of justice as cornerstones of any orderly human society but also as malleable tools to advance interests and gain personal benefits. In this sense it is once again more accurate to understand Greek law not as a monolithic, imposing and patronizing set of regulations, but rather as a multitude of perceptions, practices and strategies employed by lay and official legal actors in the archaic courts, *agoras* and streets of communities in archaic Greece.

The unity of Greek law

These observations bring us to the contentious issue of the unity of Greek law.[35] Advocates of the 'unity' thesis have argued since the nineteenth century that law, in one form or another, was universally present in all Greek *poleis* and was predicated on the same cultural values that most Greeks, despite their exclusive local affiliation to a polity, shared.[36] The opposing thesis, which was for the first time forcefully articulated by Moses Finley, holds instead that there existed so many statutory differences among the legal systems of the various Greek *poleis* of the archaic and classical periods that it is incorrect, even misleading, to refer to 'Greek Law' as if there was a unified legal system in place across the Greek world.[37] Political fragmentation effectively meant that the legal system of each *polis* was an individually tailored social construct.[38] In other words, there were as many Greek legal systems as there were political communities (in many instances self-designated *poleis*).[39] An obvious methodological upshot of this line of argument is that historians of Greek law would be better off thoroughly and independently studying the statutes and administration of justice of different Greek communities and then juxtaposing their findings. This has indeed been one of the most favoured, if not the most favoured, approaches adopted by students of Greek law.[40]

Nevertheless, recently an increasing number of scholars have come to the realization that the issue of the unity of Greek law is essentially a false dilemma. Although the tenet behind Finley's and his followers' argument that there were marked statutory differences among the various Greek

communities is certainly accurate, by the same token it is also true that, when compared to the richness and complexity of Greek legal experiences, such a thesis appears too rigid and of limited analytical value, especially in appreciating social and ideological aspects of Greek law. Hence in an essay entitled 'The Unity of Greek Law' Michael Gagarin has recently argued that, despite the undeniable statutory differences, the legal systems of most Greek *poleis* for which evidence survives shared a number of common procedural and structural features (such as the inscription of laws on durable material and their display in public, the use of accessible locations for the administration of justice and the central role of open debate in the courts of justice) that justify the use of the notion of Greek law as an analytical category in order to elucidate further the nature of Greek legal systems and the role of law in Greek communities.[41] Moreover, with particular reference to archaic and classical Crete, Angelos Chaniotis, although he underlined the fact that there was no such thing as a common Cretan *politeia* or legal system, has lately made a strong and convincing case for similarities with regard to legal terminology and institutions as well as social and political structures in a number of polities across Crete.[42] Other commentators have also pointed out that, despite the differences in substantive law and judicial procedures, the evidence suggests a number of common patterns of legal behaviours, i.e. conceptions, attitudes and practices related to the law, across the Greek world.[43]

The attempt to discover wider patterns of legal behaviour is partly dictated by the nature of many vital sources for the study of archaic law, such as Homer, Hesiod and Theognis. As Gregory Nagy has argued, the poems transmitted under the names of these authors do not reflect strictly parochial ideas but are the result of an oral cumulative synthesis of panhellenic appeal: 'the pan-Hellenic tradition of oral poetry appropriates the poet, potentially transforming even historical figures into generic ones who merely represent the traditional functions of their poetry'.[44] As a result of this process 'this poetic tradition synthesizes the diverse local traditions of each major city-state into a unified Panhellenic model that suits most city-states but corresponds exactly to none'.[45] This panhellenizing quality of most archaic poetry was undoubtedly adopted, to a certain extent at least, in order to gain popularity and recognition for these poems in the circuit of poetic performances in the archaic world.[46] On this basis, it can therefore be argued that it is far more plausible that archaic poetry portrays legal behaviours and practices that would be readily recognizable by audiences in different locales of the archaic world as akin to their actual legal experiences, even if such behaviours and practices as depicted in various

poetic compositions did not exactly correspond with substantive norms and procedures of administration of justice as experienced by each and every spectator that attended a poetic performance. By the same token, the same panhellenic features of orally performed poetry would render less likely the possibility that what they reflect are the actual legal conditions of a single historical community (e.g. the place of origin of the poet or the location of the poem's original performance). Therefore, for our purposes the works by Homer, Hesiod and Theognis and other archaic poetry can be viewed as largely detached from their particular regional associations and interpreted as containing attitudes towards law and justice that were widely understood across the archaic world.[47] A similar argument can be made with regard to legal practices and behaviours relevant to archaic Greek communities as recorded in Herodotus' *Histories*, a work of historiography that perhaps more than any other bears numerous structural and thematic similarities to the poetic genres of archaic Greece.[48]

Furthermore, an examination of selective ethnographic comparanda in Chapter IV suggests that the phenomenon of widely shared legal beliefs and behaviours is not historically confined to archaic Greece but is extensively documented in a number of other cultures. In the case of archaic Greece, the various manifestations of the concept of divine justice constitute an example of such widely shared legal beliefs. The idea that justice is divinely endowed and that it will ultimately prevail by supernatural intervention even when humans abuse it can be detected in archaic authors as diverse as Hesiod, Solon and Theognis and is alluded to in the invocation to the gods in the opening formulas of several written laws.[49] Similar arguments can be advanced with regard to lawmaking and the reception of laws in the courts. It would of course be absurd to argue that legal ideas and practices documented in this book were common across the Greek world in all city-states and at any given time during the archaic period. Significant differences did exist, e.g. the abundance of written laws from several cities in archaic Crete compared with the scarcity of public written documentation from Sparta (on this issue see Chapter IV). Similarly, it would be too risky simply to assume that comparative evidence (from some parts of Greece or other pre-modern societies) can always provide a firm basis for our assessment of the entire spectrum of archaic Greek legal experiences. However these obvious caveats should not deter one from observing patterns and common modes of thinking and engaging with law that help explain the relationship between law and social systems. It can therefore be argued that, even though it is technically more accurate to speak of 'Greek Laws' instead of 'Greek Law', in order to

acknowledge the differences in substantive law and legal procedures across Greek city-states, when it comes to the interaction between law and everyday life our sources suggest that the existence in a number of communities across the Greek world of related practices and understandings of law and justice entitles one to employ, at least in some cases, the term 'Greek Law' as a useful and analytically flexible euphemism.

Ideas about law can of course change over time, especially if one engages with the law closely as a litigant or witness or in some other capacity. Hence the relative uniformity of some perceptions of law in archaic Greece should not distract us from the myriad responses of legal actors to actual legal situations. A lay person's reaction to instances of direct involvement with the legal system can vary widely according to his/her social background, education and personality and can range from intimidation, conformity and submission to manipulation or even open resistance. Frequently, individual strategies for coping with the law involve a combination of the above in various nuances and measures. And sometimes an individual's response to legal challenges can partly contradict the same individual's beliefs and perceptions about the law. For archaic Greece, a case in point is Hesiod: although deeply committed to the ideal of a world ruled by justice, Hesiod, when faced with what he considers a crooked verdict delivered by the gift-devouring kings, is extremely critical of the justice system of his community and appeals to his psychological safety-net of divine retribution. But for the most part Hesiod conforms to the procedures and the decisions of the court and attempts to steer clear of any future litigation involving adjudication by the *basileis*. On the contrary, the poetry of Theognis suggests that some archaic Greeks, far from respecting adjudication rules and outcomes, actually manipulated the system (e.g. by abusing oaths) to gain an advantage. Thus, faced with such a complex situation at the receiving end of Greek law, researchers are clearly in need of more elaborate analytical concepts than the ones already in place, if we are to appreciate better the multitude of behaviours and practical approaches to law adopted by archaic Greeks.

In the context of the preceding analysis this book proposes the adoption of the concept of 'legal narratives' as a useful analytical tool that can be fruitfully employed in our study of social and cultural aspects of archaic law.[50] By legal narratives we mean the totality of meanings and resources generated or employed by formal[51] and informal[52] legal actors in their interaction with the law

in institutional and quotidian settings. More specifically, legal narratives comprise the entire scope of behaviours and contexts recognized by archaic Greeks as legal in the widest possible sense, including enacted statutory norms (what is commonly known as 'positive' or 'state' law), the workings of civic institutions where such statutes were endorsed and implemented (lawmaking assemblies, law courts),[53] lay practices and tactics of engagement with the law as well as people's understandings of what law is and does.[54] Thus conceived, law is, in the words of a leading contemporary legal theorist, 'made and recreated daily'.[55] Within this process, legal narratives stand at the crossroads of the institutional and personal expressions of the law and as such constitute an incisive analytical concept which is particularly apt for the study of law in societies like archaic Greece where law was, to a large extent, integrated in social life. Furthermore, approaching the subject through the category of legal narratives gives one the advantage of acknowledging the existence of formal institutions of law without downplaying its informal and commonplace manifestations. Legal narratives can be at home both in the civic courts of justice and outside formal institutional settings. And they operate on both the perceptual and the practical levels. That is because all members of a community carry with them their own, sometimes dormant or contradictory, legal narratives. When in contact with institutionalized legal settings, these narratives can be verbally articulated or employed as strategies to advance personal interests. The appropriation and transformation of aspects of the law and their articulation in legal narratives by social actors lead to a vernacularization and hybridization of the legal system as endorsed and promoted by the state. But at the same time statutory law and adjudication procedures retain much of their power to define the context within which this daily appropriation of the law operates.[56]

It becomes clear, then, that instead of the false dilemma over the unity or disunity of Greek law, if one wants to be faithful to the wealth of archaic experiences, one is bound to describe the horizon of archaic law as a mosaic of statutes, legal systems and legal narratives and counter-narratives. Archaic law was a profoundly elastic social and cultural category. From discussions of lawmaking as meaning-making to discussions of stories of defiance and resistance to the law as told by archaic Greeks, this book will have as its objective to analyse the pluralism and polyvocality of archaic Greek law by examining aspects of the web of formal legal systems and lay legal narratives in archaic Greece. Ultimately

our project aims at providing an understanding of what it meant for some archaic Greeks to engage with the law, and how that practical and perceptual engagement affected both the law and Greek communities at large.

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II

Law and Justice in Early Archaic Greece

The objective of the preceding analysis has been to suggest, mostly on the basis of comparative evidence, the range of complexity that might accompany the perception and practical application of law. But how was law actually perceived and applied in the historical communities of archaic Greece? As I have already pointed out, it is difficult to underestimate the importance of law and justice in the daily life of archaic Greeks. That was because the latter, as the archaic sources strongly imply, had realized that even the most fundamental type of relationship and interaction, in order to be functional on the social level, must be governed by at least some basic regulations. Even within the archetypal anti-societies of the Cyclopes (*Od*. 9.105-15) and the *androphagoi* (Hdt. 4.106), there were some norms and customs (albeit widely divergent from mainstream Greek standards and habits) that regulated life. A concomitant of this understanding is the existence of deviancy and transgression, i.e. the infringement of the agreed upon rules of engagement. One can safely assume that at this rudimentary level law and its violation existed in even the earliest manifestations of communal life in the Greek world. Yet undoubtedly in historical terms a more complex form of social organization inevitably brings along a more acute awareness, as well as a more sophisticated definition and articulation, of the norms that govern social life. How the laws are then perceived, produced and implemented constantly mutates in accordance with wider historical developments. For instance, in highly hierarchical societies the official paradigm usually presents law as an absolute quantity which is supposedly handed down and observed without challenge or change. In such an ideological environment it is very often a small and privileged section of the community, usually identified with the political and economic elite, which is seen as exclusively entitled to play the role of safe-keepers and interpreters of community law.[1]

This appears to have been the nature of law in many communities towards the beginning of the archaic age in Greece (c. 900-800 BC).[2] The collapse of the Mycenaean kingdoms across the Greek world at the end of

the Bronze Age was accompanied by an almost complete obliteration of their institutional and administrative apparatus. The power vacuum was gradually filled through a process of crystallization of independent civic communities created by the scattered populations that survived the end of the Mycenaean world together with some fresh immigrants.[3] Thanks to the extensive archaeological exploration of Greece and recent advances in the analysis of the Linear B records and archaic literary evidence, scholars are often able to trace the qualitative shift in institutional and economic structures, and sometimes even ideologies and perceptions, that occurred during the period in question. In the domain of law, our knowledge of the period is more problematic. To judge from the meagre evidence provided by the Linear B records, and arguing by analogy to the legal systems of the Near East, it would appear that Mycenaean Greeks possessed a system of customary, mostly unwritten set of laws, sanctioned and administered – including presumably the articulation and enforcement of norms and procedures – exclusively by the palaces and their appointed representatives.[4] In such a legal system, the impact of the vast majority of the population on legal perceptions and practices remains largely unknown. To be sure, any reconstruction of Mycenaean law and administration of justice, even by analogy with the contemporary and possibly cognate social and political systems of the Near East, must remain largely conjectural and elusive. This inference also applies to the small, impoverished communities of the so-called Greek 'Dark Ages'. Once again, ethnographic comparative evidence exists for law and the administration of justice in pre-industrial communities throughout the world in which conditions of life and social organization approximate that of Greece during the period immediately preceding the archaic age. Nevertheless, given the total lack of documentation regarding law in the period in question, any conclusions reached based solely on comparative evidence must inevitably remain largely conjectural.

Before the law

The Homeric epics are an appropriate starting point for our investigation of lawmaking and adjudication in archaic Greece. That is because the *Iliad* and the *Odyssey* constitute the earliest testimony for perceptions and practices of justice and law, including formal legal procedures, in the period in question. But the picture of law, social customs and political institutions as depicted in the *Iliad* and the *Odyssey* is marred, at least in the mind of some scholars, by serious uncertainties regarding the historicity,

purpose, context of performance and ultimately the evidentiary value of the Homeric epics. The implications of these issues are truly far-reaching not only for Homer, but also for other archaic poetry that was orally composed and/or performed (e.g. Hesiod, Theognis and to some extent Solon) and it is therefore advisable to explore such issues in some detail before proceeding to our examination of law and the administration of justice in early archaic Greece.

For many decades generations of ancient historians have attempted to provide an answer to two of the most vexing questions regarding early Iron Age Greece: does Homer depict a coherent world? And if yes, which world, and when can it be dated? The problem is as old as classical scholarship itself, but a pivotal moment came in 1954 when in the *World of Odysseus* M.I. Finley strongly argued that the Homeric epics largely depict the institutions, values and material culture of 'Dark Age' Greece, in particular the tenth and ninth centuries BC.[5] The impact of Finley's book was so remarkable (not only regarding the historicity issue) that it has essentially defined historical approaches to the Homeric epics for the last fifty years. Within this methodological framework many historians of archaic Greece followed suit and either completely accepted Finley's view or sought to modify it slightly without usually challenging its methodological foundations. Hence today many ancient historians would agree with Tandy's[6] assertion that 'the [Homeric] poems reflect or recall *some* world at *some* time' (original emphasis), although which world and from which time remains very much an open question.

The most accepted date of the composition of the Homeric epics in their present form is the late eighth/early seventh century BC.[7] Taking into consideration the mythical elements that are undoubtedly embedded in the poems and the anachronisms (historical or imaginary) that are incorporated in the narrative for 'distancing effect',[8] it has been persuasively argued that the Homeric epics in their present form depict a set of values and institutions that is relatively coherent and, in its broad outlines, in keeping with what is known[9] about the period spanning from the late ninth to the early seventh centuries BC in Greece.[10] The evidence for law and the administration of justice in Homer and other early archaic sources discussed below is in agreement with this assessment. Moreover, it is important to remember that accounts of the administration of justice in the Homeric epics, such as the Antilochus-Menelaus dispute (*Il.* 23.566-611) as well as the trial depicted on the shield of Achilles (*Il.* 18.497-508), both examined in detail below, are first and foremost poetic reconstructions of social conditions (in this case, the adjudication of a dispute) and do not

purport to be completely accurate accounts of real disputes and trials that occurred in the Homeric world (regardless of how that world is defined). Indeed, besides the constraints that the poetic genre imposes, the emphasis placed by the poet on some aspects of the dispute resolution processes at the expense of others might conceal other ideological motives (see discussion below). But besides any ideological agendas, it has been recognized that, at a more general level, the Homeric epics are also socially inclusive in the sense that they partially articulate and acknowledge the living conditions and beliefs of audiences of all social backgrounds.[11] Otherwise, the epics would in all probability have failed to gain popularity.

The last point is related to two other issues that are also of particular significance when evaluating the evidence for law and administration of justice that Homer and other archaic poets provide. The first is the panhellenizing character that has been detected in much of the extant archaic Greek poetry (see also our discussion in Chapter I). In this view, the Homeric epics and other archaic poetry, because of their continuous performance and oral composition throughout the Greek world, articulate for the most part ideals and social realities that are recognizable by most Greeks at the expense of elements of strict epichorial interest. A case in point is the method of dispute resolution through voluntary arbitration conducted in public. Variants of this method of dispute resolution are indeed attested in a number of archaic poems (the works by Homer and Hesiod[12] as well as the Homeric *Hymn to Hermes* and the *Catalogue of Women*, fr. 43) but, as is to be expected, some aspects of the procedure often vary (e.g. arbitration is conducted by panels of *gerontes* and *basileis* in Homer and Hesiod respectively, but by a single arbiter in the *Hymn to Hermes* and the *Catalogue of Women*, fr. 43). However, the assumption behind all these narratives is that archaic audiences would recognize voluntary submission of disputes to public arbitration as a viable and commonplace method of conflict resolution. The societies of the Cyclopes (*Od*. 9.105-15) and the *androphagoi* (Hdt. 4.106) discussed at the beginning of Chapter I are other, negative, examples of common expectations regarding what law is and how it should be practised. What needs to be emphasized is that these and other literary texts do not present us with exact reconstructions of legal conditions as existed in a historical community of archaic Greece but with co-existing legal narratives, i.e. related ways to understand and practice law that poets and authors expected to have been recognizable by different audiences in different communities. Other recurring patterns of legal perceptions and practices also emerge and are fairly consistent, at least as far as the extant early archaic poetic corpus

is concerned. Such patterns constitute the backbone of much of the following analysis.

Moreover, it is of paramount importance that orally transmitted poetry frequently has a didactic, one might even say normative, purpose. This aspect of Greek poetry has been adequately emphasized for poets like Hesiod, Tyrtaeus and, in relation to law and justice, Homer.[13] With reference to Homer, one can argue that the Homeric epics were composed and performed not only with the intention to entertain, but also in order to inculcate on the members of the overwhelmingly oral archaic Greek polities communal values and norms. Such a view, although analytically valuable (e.g. in connection with evaluating the elitist ideological implications of the epics; see discussion below), is ultimately inadequate. That is because the perceptions and practices of law and justice as depicted in the Homeric epics constitute an integral part, but only a part, of the everyday currency of legal narratives that must have existed in early archaic Greece. Hence, besides one-sidedly promoting particular aristocratic ideologies and worldviews, as we have already noted such poetry also articulates, albeit mostly indirectly and to a lesser extent, the concerns, values and views of those Greeks who, for some reason or another, did not find themselves centre stage in the political life of early archaic communities.[14] For example, when Homer depicts the reactions of common citizens and soldiers in assemblies and sites of adjudication (*Il*. 2.211-77; 18.497-508; *Od*. 2.1-259), he portrays a plurality of dissonant voices, thus inadvertently undermining the elitist model of divinely inspired politics, law and justice implemented by the 'god-like' *basileis* and *gerontes* in other parts of the Homeric epics. Similarly, the poetry of Hesiod, written mostly from the perspective of a middling-to-well-off farmer who does not see himself as a major player in the public domain of his community, is somewhat subversive to the aristocratic paradigm of justice, without however completely challenging the ideal of law, order and stability provided by the charismatic leader (*Th.* 81-90). Therefore for our purposes the Homeric epics, Hesiod and other archaic poetry and literature that touch on the subject of law are not only partial and incomplete reflections of the historical legal realities and perceptions in parts of archaic Greece. They are often legal narratives themselves, i.e. discourses on the nature of law and the administration of justice that contributed, through their performance to a wider audience, to the daily negotiation regarding the shape, value and place of law in early archaic Greek communities.

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Following these preliminary observations, we can now proceed to a closer analysis of prominent manifestations of law and the administration of justice in the *Iliad* and the *Odyssey*. The Homeric epics employ fairly developed terminology to denote various aspects and nuances of law, justice and adjudication. In general, law is perceived in the Homeric epics as the combination of the binding norms (θέμιστες) applicable to the entire community and the procedures that ensure the implementation of these norms.[15] Θέμις and θέμιστες are semantically wide terms and encompass, among other meanings, both custom (in the sense of norms sanctioned by practice) and law (in the sense of norms applied by the judicial authorities), although it should be noted that the two nuances quite often overlap in such a way that it would be misleading, in terms of the Homeric world, to distinguish them completely. What is unequivocal, however, is the importance of θέμιστες for the construction and maintenance of a stable and functional social system. The idea that the lack of law, in conjunction with the lack of family and a fixed abode, was commensurate with a lapse from a civilized state is explicitly articulated by Nestor in *Il*. 9.63-4 when he declares that 'a clanless (ἀφρήτωρ), lawless (ἀθέμιστος) hearthless (ἀνέστιός) man is he who loves the horror of war among his people'.[16] Contrary to such images of lawlessness, the Homeric world had firmly established procedures for dispute resolution that were well-known and accessible to most members of the community. Moreover, early archaic Greeks are depicted as fully aware of the law's moral implications. The Homeric epics are replete with moral judgments and references to what constitutes just or unjust behaviour in a particular context.

Any attempt to evaluate the historical implications of the picture of morality and justice depicted in the *Iliad* and the *Odyssey* necessitates focusing the general debate on the historical value of the Homeric epics on the issues of politics and law and as a result taking into serious consideration the ideological implications of the Homeric epics, an issue also already briefly discussed above in connection with the didactic nature of the *Iliad* and the *Odyssey*. I will therefore proceed by first examining and evaluating in greater detail the importance of the elitist political and legal discourses echoed in the epics. The less evident implications regarding the deliberative and decision-making powers of lower social orders will be the focus of analysis further ahead in this chapter, in relation to particularly germane passages.

It can be reasonably argued that, with the exception of some discordant voices (e.g. Thersites; the suitors in Ithaca), often moral beliefs, ideologies and paradigms of social order (e.g. the position and role of the *oikos* and of the various members therein), including perceptions of law and justice, are presented in the epics as almost universally espoused. Indeed, even the few prominent instances of deviancy, expressed in words and deeds, and the detrimental consequences they entail, can be interpreted as indirect endorsements of the proper social, ethical and normative universe that the poems sanction and, it is implied, the majority of the audience would be expected to follow.[17] Moreover, as we have already pointed out, the epics also contain a strong elitist ideological subtext which suggests that perceptions of justice, at least in the manner expressed by Homer, largely reflect an upper-class perspective. As Ian Morris has persuasively argued in his widely-read 1986 essay, the Homeric epics articulate a narrative which reflects a range of social conditions, yet they are predominantly 'an ideological tool to legitimize elite domination, presenting it as natural and unchangeable'.[18] In other words, while one might expect that particular conditions as described in the *Iliad* and *Odyssey* (e.g. dispute resolution procedures, see above) are fairly realistic, albeit stylised, representations of social realities, the moral and legal ideals that the epics endorse were to a large extent the ideals that the elites of the communities across the Homeric world (irrespective of the date one attaches to it) were particularly keen on promoting, with dissonant voices only marginally depicted.

Throughout the Homeric epics the social, economic and political predominance of the ruling elite, in the form of warrior heroes, community elders and *basileis*, is closely associated with kinship relationships, physical attributes, social prestige and material wealth. In the Homeric world membership in a noble household gave one the resources (material and symbolic) and influence (augmented in case of an individual blessed with a magnetic personality and natural leadership skills, i.e. the essential ingredients of charismatic claims to legitimacy)[19] to present oneself as capable of claiming a position of authority and thus shaping the fortunes of one's community, including its social and moral norms.[20] In the field of law, the claims to charismatic authority made by the Homeric elites were manifested in primarily two ways. Firstly, the *basileis*, elders and other prominent figures of the Homeric world are depicted as being in charge of the administration of justice and the management of the legal/decision-making resources (e.g. assemblies) of the Homeric communities. Secondly, Homeric elites are portrayed as being responsible for the articulation and interpretation of moral and normative standards which promoted social

peace and stability and ultimately legitimized, consolidated and perpetuated the aristocracy's cultural and political ascendancy.

In public legal proceedings, as well as in other aspects of public life, the Homeric world relied entirely on orality and memorization. As a result, oratorical skills and the right to define and use the community's ancestral traditions, social customs and unwritten statutory norms became of paramount importance. Moreover, in accordance with the lack of any substantial written texts from early archaic Greece[21] there is no allusion in Homer to written law, although it is clear that norms of conduct were considered to be well-known and widely accepted.[22] It was this set of orally transmitted and widely accepted norms and procedures that constituted what Greeks of the Homeric world perceived as law.

The oral nature of norms and administration of justice in the Homeric world certainly reinforced the aristocratic claims to exclusivity in interpreting and managing law. It also reinforced the image of law as a hegemonic force, separate from the sphere of everyday life and ultimately divine and accountable to Zeus.[23] It appears that the link between law, justice and the divine was extensively espoused in the archaic world and comes across very clearly in most archaic authors, including Homer and Hesiod, and much of the surviving inscriptional evidence through invocations to gods and curses. Members of the Homeric aristocracy skilfully employed such deeply-embedded beliefs with constant appeals to divine power and promotion of an image of approbation of the elite's actions by the gods, including their judicial practices and authority.

Judges in the Homeric world are unquestionably portrayed as members of the social elite, and most specifically as *basileis* ('kings') and *gerontes* ('elders'). Quite often the two functions are identified inextricably, e.g. *Il.* 2.205-6 Εἷς κοίρανος ἔστω, εἷς βασιλεύς ᾧ δῶκε Κρόνου πάϊς ἀγκυλομήτεω σκῆπτρόν τ᾽ ἠδὲ θέμιστας, ἵνα σφίσιν βουλεύῃσι ('let there be one ruler, one king, to whom the son of devious-minding Kronos gives the sceptre and right of judgment to watch over his people')[24] and kings are often called δικάσπολοι ('having authority to judge', e.g. *Od.* 11.186 Τηλέμαχος τεμένεα νέμεται καὶ δαῖτας ἐίσας δαίνυται, ἃς ἐπέοικε δικασπόλον ἄνδρ᾽ ἀλεγύνειν 'Telemachus holds your lands and feasts at equal banquets, such as it is fitting that a man who metes out justice should share'; cf. also *Il.* 1.238-9 ᾽Αχαιῶν ἐν παλάμῃς φορέουσι δικασπόλοι οἵ τε θέμιστας πρὸς Διὸς εἰρύαται 'the sons of the Achaeans that give judgment bear it [i.e. sceptre] in their hands, those who guard the laws that come from Zeus').[25] Holding the sceptre is the most characteristic sign of authority in the Homeric epics, and the Homeric *basileis* pompously

display it during the settlement of disputes and in political assemblies.[26] As part of the political and legal processes, the sceptre examplified the coveted prerogative of the *basileis* and *gerontes* to speak and rule.[27] As a result, the Homeric aristocracy, being the only social group with unrestricted access to public oratory, could effectively control how communal norms were articulated and enforced in the courts of law.[28] Moreover, it should be noted that the symbolism emanating from the use of the royal sceptre had wider implications that went beyond the legal and political sphere. Quite simply, the sceptre was the palpable physical link between worldly and divine power (e.g. *Il*. 9.97-9, πολλῶν λαῶν ἐσσι ἄναξ καί τοι Ζεὺς ἐγγυάλιξε σκῆπτρόν τ᾽ ἠδὲ θέμιστας, ἵνα σφίσι βουλεύῃσθα ‘you are a king of many men, and Zeus has put into your hands the sceptre and justice, so that you may take counsel for your people’; see also *Il*. 1.238-9 and *Il*. 2.205-6, above). In that sense, it bestowed legitimization on the social, political and economic conditions that the Homeric epics assume as the natural world order. Hence by reinforcing their image as privileged conveyors of Zeus’ justice and power, Homeric *basileis* further enhanced their position of political dominance within their communities.

The *basileis*’ prominence in the administration of justice in early archaic Greece is also echoed by authors of the classical period. For instance, Aristotle claims that in early periods of Greek history kings acted as judges and meted out verdicts, deciding sometimes on their own oath (*Pol*. 1285b8-12: ἐγίγνοντο βασιλεῖς ἑκόντων καὶ τοῖς παραλαμβάνουσι πάτριοι. κύριοι δ᾽ ἦσαν τῆς τε κατὰ πόλεμον ἡγεμονίας καὶ τῶν θυσιῶν ὅσαι μὴ ἱερατικαί, καὶ πρὸς τούτοις τὰς δίκας ἔκρινον· τοῦτο δ᾽ ἐποίουν οἱ μὲν οὐκ ὀμνύοντες οἱ δ᾽ ὀμνύοντες, ὁ δ᾽ ὅρκος ἦν τοῦ σκήπτρου ἐπανάτασις ‘These kings used to come to throne with the consent of the people and hand it on to their successors. They had supreme command in war and all sacrifices that were not in the hands of the priests, and in addition to these functions they adjudicated lawsuits. Some gave judgments not on oath and some on oath, and the oath was taken by holding up the sceptre’.[29]

Furthermore, the story of Deioces, the first king of the Medes, as recounted by Herodotus (1.96-8), also provides us with a glimpse of administration of justice by charismatic and prominent individuals, similar to Homeric and Hesiodic *basileis*, in archaic Greece. Even though the historical context of the story is not Greek, the narrative of Herodotus, as Gagarin has convincingly argued, ‘seems to be shaped by Greek thinking about law and order and to be relevant to the Greek experience’.[30] According to this narrative, Deioces was the first king of the Medes and

owed his popularity and rise to power largely to his judicial skills. He was already a socially prominent (δόκιμος) man and became the most sought after judge (δικαστής) in his village, i.e. most of his fellow-citizens chose to submit their disputes to him for adjudication. Soon his reputation grew beyond the confines of his community, and people who had experienced injustice at the hands of judges in other villages also began to bring their disputes to Deioces. In the end Deioces became the most famous judge in the country, and all potential litigants sought his judgment. So when one day he suddenly withdrew from the court, lawlessness (ἀνομία) broke out to the extent that the Medes had no other choice but to appoint Deioces as their king.[31] With reference to the administration of justice the story of Deioces reflects conditions similar to what our evidence suggests for early archaic Greece, i.e. disputes settled by prominent and influential members of the community.[32] All in all, our sources suggest that, if Greeks of the early archaic period wished to settle their disputes within the limits of the acknowledged legal procedures, they had ultimately to rely on the authority and sense of justice of the upper-class adjudicators, commonly identified in the sources as *basileis* and *gerontes*.

The Homeric epics suggest that once moral values and rules of social conduct had been established, they were disseminated in a process of enculturation through poetry (such as the Homeric epics) and song, daily interaction and other means that made them appear as universally agreed and unchallenged in principle. Once again, we are probably justified in thinking that this is to a large extent an idealized picture: it is far more likely that in the historical communities of the eighth and early seventh century BC the content of many norms of behaviour were challenged or ignored on a regular basis. But within the internal logic of the Homeric epics, this presumed universality of orally preserved but socially binding norms helps explain why in all legal contexts portrayed in the *Iliad* and the *Odyssey* the emphasis is not on what might be called substantive law, i.e. the content and meaning of the norms, but rather on the procedure adopted for their enforcement in dispute resolution. In other words, the emphasis lies not so much on the content of moral beliefs and norms (these were assumed as widely known) but on the effort exerted and the practical means adopted by the ruling elite towards the resolution of conflict. In practice, many disputes were undoubtedly settled, or at least were attempted to be settled, between the litigants without recourse to the judicial authorities. In a simile in book 12.421-3 of the *Iliad*, Homer describes a scene of two neighbouring farmers with measuring rods in hand attempting to establish the border of their fields. If a dispute could not be resolved on the

interpersonal level, then the most common step towards dispute settlement appears to have been its submission to formal arbitration. By arbitration we denote any kind of mediation carried out with the objective of settling a dispute. Cross-culturally, arbitration as the major means of dispute resolution is most commonly encoutered in pre-modern societies with less developed state apparatuses. In such societies arbitration is usually performed by a person or persons of influence and authority, an inference corroborated by the story of Deioces and the evidence on Homeric *gerontes* examined above (cf. also the Hesiodic *basileis*, discussed below). After a dispute has been resolved, the enforcement of the decision was effected primarily through informal networks of social pressure.[33]

In the Homeric world arbitration could be conducted in a number of ways, depending on the conditions of the dispute as well as the status of the litigants and the arbitrator(s). All instances of adjudication in the Homeric epics suggest that the two most important parameters in conflict resolution were the search for a mutually acceptable settlement and the maintenance of social hierarchy. Hence in the personal feud between Agamemnon and Achilles that constitutes the central theme of the *Iliad* a form of prolonged, indirect mediation is adopted as the best method of dealing with the crisis. In this instance, other prominent members of the Greek camp and social peers of the two rivals, such as kings Nestor and Odysseus, occasionally intervene in an attempt to mediate and resolve the dispute (e.g. *Il.* 9.225-306). On another occasion, following the slaughter of the suitors, a large-scale vendetta between the *oikos* of Odysseus and the relatives of the slain is averted through the mediation of Athena (*Od*. 24.413-548).

The dispute between Antilochus and Menelaus (*Il*. 23.566-611) which occurs during the funeral games of Patroclus in book 23 of the *Iliad* is more revealing with regard to ideas and practices of administration of justice. Both litigants are members of the elite and leaders of the army and therefore of an equal social status (although Menelaus commands more respect because of his seniority). The issue at hand is deciding the winner of the second prize in the chariot race. Antilochus has finished second during the race, but Menelaus argues that he did so by driving his chariot recklessly and endangering the life of both competitors (*Il*. 23.566-85):[34]

> Then among them rose up Menelaus, grieved at heart,
> furiously angry at Antilochus; and a herald
> placed the sceptre in his hand (χειρὶ σκῆπτρον ἔθηκε), and
> proclaimed silence

among the Argives; and then spoke among them the godlike (ἰσόθεος) man:
'Antilochus, you that once were wise, what a thing have you done!
You have put my skill to shame and have thwarted my horses,
thrusting to the front your own that were far lesser.
Come now, you leaders and rulers of the Argives (Ἀργείων ἡγήτορες ἠδὲ μέδοντες),
come in the middle and judge this between ourselves (ἐς μέσον ἀμφοτέροισι δικάσσατε) without partiality
lest in the future one of the brazen-clad Achaeans shall say:
"Over Antilochus did Menelaus prevail by lies,
and depart with the mare because his horses were far lesser,
but he himself the mightier in worth and in power."
But I will myself adjudicate this matter (εἰ δ' ἄγ' ἐγὼν αὐτὸς δικάσω), and I deem
that no other of the Danaans will reproach me, for my judgement will be just (ἰθεῖα γὰρ ἔσται).
Antilochus, nurtured of Zeus, up, come here and, as is the custom,
stand before your horses and chariot and take in hand
the slender whip with which you were driving just now,
and laying your hand on your horses swear by him that holds and shakes the earth
that not of your own will did you hinder my chariot by guile.'

Even though Achilles is recognized as the organizer and supervisor of the funeral games of Patroclus, the two litigants take matters in their own hands, and Menelaus challenges Antilochus to an arbitration of their dispute. Initially Menelaus makes an appeal to the other 'leaders and rulers of the Argives' to intervene and judge the dispute, but afterwards he changes his mind and decides to implement the procedure himself by issuing an oath-challenge[35] to Antilochus. This procedure has been viewed by some commentators as irregular. For instance Gagarin (1986, 38) calls the procedure 'informal' because the case is settled by the litigants themselves and not by a judge. However, there is nothing in the speeches of either litigant to suggest that Homer and his audience shared that view. Indeed the lack of any reaction by Antilochus and the rest of the Greek army attending the funeral games regarding Menelaus' challenge and the procedure adopted indicates that there was nothing improper, extraordinary or irregular about the proceedings and that the settlement of a dispute by two litigants, with or without the intervention of judges, was considered

part of mainstream legal practices. With particular reference to the Antilochus-Menelaus dispute, the high social status of both litigants bestowed upon them the exclusive and inherited right to act as interpreters and enforcers of law and certainly facilitated, in the mind of the audiences who heard the Homeric epics performed, the role of both litigant and arbitrator assumed by Menelaus.[36] At any event, the Menelaus-Antilochus dispute does not reach a judicial climax, and no resort to an oath is needed. Instead, the dispute is resolved in accordance with the 'decision by consensus' principle which has been detected in connection with decision-making procedures in the Homeric epics[37] but which is also in operation during this instance of dispute-settlement. According to this principle, after taking into consideration the social status of the litigants (in the case of the Antilochus – Menelaus dispute social peers and members of the ruling elite), the person with less strong feelings on the issue (i.e. Antilochus) honourably gives in for reasons (seniority of Menelaus; willingness to restore the second-place prize and to provide further gifts) that are in keeping with the ethical code of the Homeric warrior elites. Following that, rather predictably the entire scene reaches a happy ending, in accordance with the general conciliatory mood of the funeral games, and the Greek warrior elite's display of generosity and deference to their peers. Thus Menelaus is touched by Antilochus' sincerity and abandons the arbitration procedure and gives him back the prize. And after the Menelaus-Antilochus dispute is successfully settled, the organizer of the funeral games, Achilles, awards an unclaimed prize to the universally respected Nestor. Hence order and equilibrium has been restored in the Greek camp.[38]

It should be pointed out that, even though the Menelaus-Antilochus episode is quite illuminating regarding the interrelationship between high social status and the right to administer justice, there is no right to assume that dispute resolution of the kind portrayed in *Il*. 23.566-611 (i.e. involving only the two litigants) was confined to the social elites. Indeed, there must be little doubt that other Greeks, beyond the borders of the aristocracy, resorted to similar proceedings in order to resolve disputes with relatives or neighbours. Such proceedings perhaps also included oath-challenges, similar to the one suggested by Menelaus, as means of dispute resolution without recourse to outside arbitrators or the courts of the elders. What differentiated high-profile aristocratic disputes, such as the one between Menelaus and Antilochus, from quotidian unassuming attempts of dispute resolution occurring between the rank and file was perhaps the claim, unambiguously implied by Menelaus, that his judgment as arbitrator

had the same validity and force as the collective judgment of the Greek *hēgētores*.

The predominance of the aristocracy in meting out justice is also clearly reflected in the dramatized trial depicted on the shield of Achilles which contains snapshots, at times rather idealistically rendered, of social life in early archaic Greece. With regard to law, the shield contains a description of a litigation procedure (*Il*. 18.497-508):[39]

> λαοὶ δ᾽ εἰν ἀγορῇ ἔσαν ἀρθρόοι· ἔνθα δὲ νεῖκος
> ὠρώρει, δύο δ᾽ ἄνδρες ἐνείκεον εἵνεκα ποινῆς
> ἀνδρὸς ἀποκταμένου· ὁ μὲν εὔχετο πάντ᾽ ἀποδοῦναι
> δήμῳ πιφαύσκων, ὁ δ᾽ ἀναίνετο μηδὲν ἑλέσθαι·
> ἄμφω δ᾽ ἱέσθην ἐπὶ ἴστορι πεῖραρ ἑλέσθαι.
> λαοὶ δ᾽ ἀμφοτέροισιν ἐπήπυον, ἀμφὶς ἀρωγοί.
> κήρυκες δ᾽ ἄρα λαὸν ἐρήτυον· οἱ δὲ γέροντες
> ἥατ᾽ ἐπὶ ξεστοῖσι λίθοις ἱερῷ ἐνὶ κύκλῳ,
> σκῆπτρα δὲ κηρύκων ἐν χέρσ᾽ ἔχον ἠεροφώνων·
> τοῖσιν ἔπειτ᾽ ἤϊσσον, ἀμοιβηδὶς δίκαζον.
> κεῖτο δ᾽ ἄρ᾽ ἐν μέσσοισι δύω χρυσοῖο τάλαντα,
> τῷ δόμεν ὃς μετὰ τοῖσι δίκην ἰθύντατα εἴποι.
>
> The people were gathered in the place of assembly; for there a strife
> had arisen, and two men were striving for the blood price
> of a man slain; the one claimed that he had paid all,
> declaring his cause to the people, but the other refused to accept
> anything; both then made for an *istōr*, to reach a decision.
> Moreover, the people were cheering both, showing favour to one
> side or the other.
> But the heralds kept the people back, and the elders
> were sitting on polished stones in the sacred circle,
> holding in their hands the sceptres of the loud-voiced heralds.
> With them would they spring up and give judgment, each in turn.
> And between them lay on the ground two talents of gold,
> to be given to the one who among them should utter the most
> straight judgment.

The lawsuit depicted on the shield of Achilles can be more accurately described as an arbitration which was voluntarily submitted to by the litigants and adjudicated by the socially powerful, if not necessarily institutionally established as a court, group of elders. The issue at hand is

reparation for homicide.[40] The entire procedure takes place in public. The process begins when the accused publicly declares (δήμῳ πιφαύσκων, 500) that all reparations have been made.[41] When challenged to the contrary by the plaintiff, the two parties agree to proceed to formal adjudication which takes place in the *agora* where a great number of people had gathered (λαοὶ δ᾽ εἰν ἀγορῇ ἔσαν ἀρθρόοι, 497). The passage then refers both to an ἴστωρ (501), a noun which translates as a 'learned', 'wise' person[42] and is cognate with words such as ἱστορία and ἱστορέω that point to a thorough inquiry into a matter, a comprehensive understanding of the matter in question and quite possibly, an ability to successfully apply that knowledge in different situations. Whatever his exact role, the ἴστωρ certainly possessed some official capacity in the court, but it was from the panel of the community elders (γέροντες, 503) that ultimately a verdict was expected. More specifically, it is not clear whether ἴστωρ in this case designates one of the *gerontes*, the leading men of the city, acting in a capacity different (e.g. as the official who initiated proceedings and/or convened the court) from his capacity as judge (*Il*. 18.506 δίκαζον), or whether a two-stage procedure (according to which the litigants first sought justice with a single arbitrator, who then referred the matter to the more prestigious group of elders) is to be envisaged.[43] Other interpretations of the ἴστωρ are also possible. Be that as it may, the elders eventually came in session with two talents of gold lying in front of them, most commonly interpreted as the fee collectively claimed by the group of elders who heard the dispute or, alternatively, the gold was single-handedly awarded to the elder who suggested the verdict that settled the matter.[44]

But while the concluding scene of the trial reinforces the picture of a judicial system entirely controlled by the social and political elite, it is also important to emphasize some other features of the lawsuit that are of paramount importance. The first is the public nature of the judicial proceedings. Conducting lawsuits in public was a central aspect of the administration of justice in a number of cities across late archaic and classical Greece, and it is therefore not surprising to find a similar practice reflected in the earliest literary depictions of litigation.[45] It is also not surprising that, because the administration of justice was a highly public affair, litigants and other interested parties developed suitable techniques and strategies in order to deal successfully with legal challenges.[46] Hence the scene of arbitration depicted on the shield of Achilles strongly suggests that in the Homeric world success in litigation depended heavily on the ability to mobilize one's network of

relatives and friends and the skill to construct and effectively deliver one's side of the story in front of the elders and the audience.[47] Thus at the outset of the lawsuit the two parties present their own case first in front of the people (δήμῳ πιφαύσκων, *Il*. 18.500) before soliciting the help of an official who was probably invested with an unquantifiable degree of judicial authority (ἴστωρ, see above), and then presumably expounding their arguments again in front of the panel of *gerontes* who adjudicated the dispute. If the declarations in front of the people and the recourse to the *istōr* and then the elders constituted different stages of the dispute settlement procedure, then it is plausible that the litigants might have had to deploy their rhetorical skills more than once in the course of litigation. At any event, one has to look no further than classical Athens to appreciate how a persuasive presentation of one's case could go a long way in making the difference between success or defeat in court.

Moreover, and besides the rhetorical skills of the litigants, persuasive oral delivery of a verdict was also critical in the process of settling the dispute by the elders. These *gerontes* administer justice in a manner that is strikingly reminiscent of political assemblies:[48] they stand up in turn (presumably in an order that is in keeping with Homeric elite protocol) and utter their verdicts (δίκην ... εἴποι, 508) while holding the herald's sceptre. The success of the elders' adjudication rested on the extent to which the verdict, regardless of how it was reached, was accepted and implemented by the litigants and other members of the community. In short, the rhetorical ability and social prestige of both the litigants and the court officials/adjudicators must have played a crucial role in rendering a verdict acceptable and applicable.

Another crucial feature of Homeric litigation, which in reality is a consequence of the fact that adjudication occurred in public, is the involvement of the people (λαοὶ)[49] in the course of the trial. The poet strongly emphasizes that during the lawsuit spectators turn up in big numbers and take an active part in cheering in support of their favoured side (ἐπήπυον, *Il*. 18.502). The extent of the people's involvement is suggested by the fact that they had to be held back (ἐρήτυον, *Il*. 18.503) by heralds. We have already remarked the similarities in the conduct of the adjudicating elders, as depicted on the shield of Achilles, and the behaviour of the *basileis* and other leading figures in political assemblies. Parallels can also be detected with regard to the behaviour of the spectators of the lawsuit and the conduct of the people (whether the *dēmos* of a civic community or the Greek army in Troy) in political assemblies. The format

of these assemblies usually allows for a certain degree of informal popular participation in deliberation and decision-making. For example, after listening to Agamemnon's proposal to abandon the siege of Troy and return to Greece, the assembly of the Greeks 'was shaken' (*Il*. 2.144 κινήθη δ' ἀγορὴ), as 'men were all shouting to one another' (cf. *Il*. 2.149 ἀλαλητῷ; cf. also *Il.* 7.403-4, where the Greeks shout aloud in approval of Diomedes' speech πάντες ἐπίαχον υἷες Ἀχαιῶν, μῦθον ἀγασσάμενοι Διομήδεος). Similarly, in book 1 of the *Iliad* when Chryses requests the Greeks to release his daughter, the assembled people 'shouted in agreement' (*Il*. 1.22 πάντες ἐπευφήμησαν Ἀχαιοὶ).[50]

The importance of the public nature of judicial proceedings and of the popular participation in them is reflected in the clout that the informal pressure exerted by the spectators of the trial and public opinion in general must have had in the settlement of judicial disputes as well as the implementation of penalties. The aristocratic *gerontes* might have been the sole adjudicators but the people at large could mitigate their authority and negotiate the interpretation of social norms and judicial decisions by their sheer numbers and intervention during the judicial proceedings. These audiences brought into play additional factors (e.g. obligations deriving from social networks of family and friends, which were then translated into support at a trial) and other individual courtroom tactics that went beyond the legal narratives of the social elites as propagated in the courts and through performances of epics such as the *Iliad* and the *Odyssey*. Besides social standing and rhetorical skills, one must therefore add popular reactions to court verdicts and other legal practices as important, although in the present state of the evidence not easily quantifiable, factors in the implementation of justice in the Homeric world. On these grounds, it can be reasonably suggested that in Homeric Greece the lower social orders, through their informal but substantial participation in public proceedings, could to some extent adulterate the dominant legal order of the warrior kings.

The Menelaus v. Antilochus story and the Achilles shield lawsuit in many ways complement and confirm each other and reveal interesting aspects of the workings of the legal system as depicted in the Homeric epics. In both instances modern readers and ancient audiences are left to believe that the disputes are successfully adjudicated and that social order has been restored. This impression is not contradicted by the fact that the trial on the shield of Achilles is left unresolved. The poet has demonstrated that the dispute has at least taken an appropriate and acceptable course towards its resolution and that therefore every effort has been made to

abide by the rules and preserve social stability. This conclusion fits well with the overall mood of the various scenes depicted on the shield of Achilles, which for the most part portray an idealized picture of social stability in functional and smooth-running communities under the efficient and benevolent leadership of the aristocracy. With regard to law and justice, what matters for Homer and his early archaic audiences is that justice triumphs and the authority and reputation of the judges come out unscathed. We are never told explicitly what the litigants and the audiences in a trial like the one depicted on the shield of Achilles thought about the procedure or its outcome, even though they had a great bearing on both.

To recapitulate, the aristocracy's grip on the administration of justice and the ideal of law as a transcendent quality as portrayed in the Homeric epics are closely intertwined with the social and political ascendancy of the aristocracy. Judicial procedures could vary according to the circumstances of the dispute and the status of the opposing parties. The procedural flexibility displayed in the settlement of the Menelaus v. Antilochus dispute can be explained on the grounds of the social standing of the litigants. On other occasions, disputes that could not be settled among the interested parties were brought in for arbitration in front of the elders, as in the trial on the shield of Achilles. In all these judicial hearings, some general rules of procedure, e.g. the public nature of deliberations or rules concerning the use of oaths, seem to have been almost consistently followed.

Most importantly, the Homeric epics strongly suggest that law, administered through the inspired verdicts of the *basileis*/judges, always achieved the desired conflict resolution and social reconciliation. In consequence, and according to the dominant paradigm of politics and justice projected by the *Iliad* and the *Odyssey*, litigants and other community members could appeal only to the powers of the law and the judges (hence they stand *before* the law), without however having the capability formally and effectively to contest the aristocracy's exclusive prerogative to interpret and administer it. As one of the leading legal anthropologists has put it, 'hegemony is internalised domination, whereby control becomes normalised'.[51] Yet even though the control of the judiciary in early archaic Greece by the aristocracy was undoubtedly a historical reality, citizens of the early *poleis* could exert informal pressure in the courts and thereby voice at times their dissatisfaction or outright opposition to the aristocratic paradigm of law and justice. The everyday currency of legal discussions and adjudications in early archaic Greece must have looked much more complex than Homer and his aristocratic audiences would dare to admit. Law was for archaic Greeks an integral part of the

popular morality and value system that largely determined social relationships. It permeated everyday life, and its ramifications were seen and felt even by those who were not directly engaged with it. The poetry of Hesiod is also a testimony to that effect. As we are about to see, Hesiod's poetry contributes a significant parameter to the social character of early archaic law. It suggests that, in addition to the input of the litigants and common spectators in the courts, law was contestable, contrary to the Homeric aristocratic ideal, on the perceptual level as well. Archaic Greeks could not merely attempt to influence the interpretation of the law by shouting in the courts, but occasionally they explicitly stood up against it. In a sense, the history of law in archaic Greece is the history of its separation from the firm grip of the aristocracy and its perceptual transformation from absolute truth to social convention.

Divine justice

In order to evaluate lay Greek understandings of the law and appreciate the law's impact in everyday life, we need personal stories of people who have had close encounters with the legal system of their communities. Personal everyday stories, particularly of individuals who were not part of the ruling political elite, are hard to come by in Greek history. But in the case of early archaic law we are fortunate to possess the testimony of Hesiod, the poet-farmer from Boeotian Askra who composed in the late eighth/early seventh century BC.[52] Fortunately for us, Hesiod had a personal experience with the justice system of his community, and he relates various aspects of it in the *Works and Days* and the *Theogony*. In a nutshell, Hesiod was involved in judicial litigation with his brother Perses over the inheritance left by their father. It is important to know that Hesiod lost this case, a fact that inevitably influenced his perspective on law and justice. Perhaps even more important is the realization that Hesiod displays in his poetry two attitudes towards law that at first glance appear contradictory: in keeping with what we have seen for the Homeric epics, Hesiod also subscribes to the belief in an independent domain of justice, in justice as a transcendent value originating with the gods. For Hesiod true justice resides in a world out of the ordinary and can be achieved by divine intervention. But in the real world of Hesiod justice is trampled by the verdicts of the greedy and corrupt *basileis* who act as judges. True justice has to struggle in order to prevail and get reinstated into the human world. As they are particularly revealing of everyday attitudes towards justice, it is worth looking into these two facets of Hesiodic perceptions of justice in more detail.

According to Hesiod, in an ideal state justice is meted out by divine dispensation. In the divine genealogy 'virgin Justice' (παρθένος Δίκη, *Op.* 256) is a daughter of Zeus and revered by all gods.[53] In a perfect world, true justice is realized through the intervention of benevolent rulers (βασιλεῖς) who are responsible for adjudication in a manner similar to the trial on the shield of Achilles. Evenhandedness and the ability to mete out justice effectively and communicate verdicts that are fair and acceptable to the litigants are also presented as divine gifts (*Th.* 81-90):

> ὅν τινα τιμήσωσι Διὸς κοῦραι μεγάλοιο
> γεινόμενόν τε ἴδωσι διοτρεφέων βασιλήων,
> τῷ μὲν ἐπὶ γλώσσῃ γλυκερὴν χείουσιν ἐέρσην,
> τοῦ δ᾽ ἔπε᾽ ἐκ στόματος ῥεῖ μείλιχα· οἱ δὲ τε λαοὶ
> πάντες ἐς αὐτὸν ὁρῶσι διακρίνοντα θέμιστας
> ἰθείῃσι δίκῃσιν· ὃ δ᾽ ἀσφαλέως ἀγορεύων
> αἶψά κε καὶ μέγα νεῖκος ἐπισταμένως κατέπαυσεν·
> τοὔνεκα γὰρ βασιλῆες ἐχέφρονες, οὕνεκα λαοῖς
> βλαπτομένοις ἀγορῇφι μετάτροπα ἔργα τελεῦσι
> ῥηιδίως, μαλακοῖσι παραιφάμενοι ἐπέεσιν.
>
> Whoever of heaven-nourished rulers the daughters of
> great Zeus [i.e. Muses] honour and behold him at his birth,
> they pour sweet dew upon his tongue
> and from his lips flow gracious words. All the people
> look towards him while he settles disputes
> with true judgments. And he, speaking surely,
> would soon make wise end even of a great quarrel.
> For therefore are there princes wise at heart, because when people
> are misguided in their assembly, they set right the matter again
> with ease, persuading them with gentle words.[54]

Wise and impartial *basileis* are therefore the earthly incarnations of divine *Dikē*, the means whereby justice on earth is attained. But as Hesiod emphatically points out in other segments of his poetry, this is merely an exception, or even an ideal. In a process of theodicy and retribution *Dikē* constantly watches over the deeds of men and reports to her father,[55] who then wreaks pain and suffering on the cities of those rulers/judges (βασιλεῖς) who utter crooked judgments (*Op*. 260-2 ὄφρ᾽ ἀποτίσῃ δῆμος ἀτασθαλίας βασιλέων, οἳ λυγρὰ νοεῦντες ἄλλῃ παρκλίνωσι δίκας σκολιῶς ἐνέποντες; cf. *Op*. 222-4; 238-47; 267-9).[56]

This is a point to which we shall return, but for the time being it is worth emphasizing that Hesiod identifies crooked justice as one of the major evils that afflict Askra, Hesiod's small farming community in Boeotia.

In a sense Hesiod presents true justice as ultimately attainable. Even when she is submitted to various trials and tribulations by crooked judges, Justice always prevails: Δίκη δ' ὑπὲρ Ὕβριος ἴσχει ἐς τέλος ἐξελθοῦσα 'Justice comes on top of Violence at the end' (*Op.* 217-18). Despite the fact that justice is in these passages humanized, it is still impartial and authoritative. True Justice exists on a different plane and intervenes in the everyday world when human law is fractured. Justice is in other words reified,[57] and it is exactly this process of reification that allows Hesiod to account for the discrepancy between the ideal of justice, on the one hand, and his personal experiences, on the other. Reification, i.e. the process whereby an abstract concept (in this case justice) is concretized, is accompanied by a perceived removal of that concept from everyday life and particular social conditions. Hence Hesiod retains his faith in idealized justice even though his personal experience with the law has been negative and he strongly condemns the agents of human justice (gift-devouring kings) and their verdicts.

This idealized conception of law and justice as a holistic entity, supernal and separated from the human sphere, is not exclusive to Hesiod, but is also encountered in numerous other authors of the archaic period. We have already seen the connection between law, justice and the divine in Homer. Moreover, Solon and Theognis are two revealing cases, since both of them had a keen interest in the legal system of their *polis* (and Solon personally contributed to its overhaul) and left a written record of their experiences. Similarly to Hesiod, both Solon and Theognis find no difficulty in compromising the notion of ideal, reified justice with the complex legal realities of their day.[58] Other archaic sources suggest that besides these authors, similar perceptions of justice were widely shared across the Greek world. For example, Archilochus, a seventh-century poet nearly contemporary with Hesiod, encapsulates the belief that justice is overseen by the gods when he claims that no injustice, however small, ever escapes Zeus (177 West: ὦ Ζεῦ, πάτερ Ζεῦ, σὸν μὲν οὐρανοῦ κράτος, σὺ δ' ἔργ' ἐπ' ἀνθρώπων ὁρᾷς λεωργὰ καὶ θεμιστὰ, σοὶ δὲ θηρίων ὕβρις τε καὶ δίκη μέλει 'Zeus, father Zeus, yours is the rule in heaven, you watch over men's deeds, wicked and lawful, and both the violence and the justice of the beasts are your concern'). Moreover, Herodotus (8.77) quotes an oracle, allegedly delivered some time before the battle of Salamis, referring to 'divine justice' (δῖα δίκη).[59] The link between law and the divine is also

evident in many of the stories related to the archaic lawgivers. Hence late literary traditions explicitly associate the archaic legislations of some Greek cities with direct divine inspiration or even intervention.[60]

Finally, another set of evidence that reveals a great deal about superstitious and religious beliefs as well as lay perceptions of law in the ancient world are the so-called *defixiones iudiciariae*,[61] i.e. curse and prayer tablets specifically referring to judicial matters. As the literary evidence, so judicial *defixiones* also attest to the fact that the perception of justice as elevated and divinely endowed was popularly accepted and embedded throughout the Greek world. Situated between formal legal discourse and superstitious beliefs and magic, judicial *defixiones* offer a valuable vantage point from which to study lay perceptions of law and legal culture. Most of the surviving *defixiones* date from the classical and Hellenistic periods, but some are late archaic, and there is no compelling reason to believe that beliefs and practices alluded in them were not in circulation in earlier centuries as well.[62] Extant *defixiones iudiciariae* most commonly comprise curses against opponents in court. Related in content are the prayers that refer to legal matters, dedicated in order to achieve a favourable verdict in the courts.[63] The association between justice and the divine emerges most explicitly in the judicial prayers.[64] In such instances the wronged party dedicates a prayer (usually in the form of a lead tablet containing the *defixio*) and entrusts the entire case to the justice of the gods. There is wide disagreement among scholars regarding the timing of inscribing and dedicating a *defixio* in relation to the development of a trial. For some, the act of inscribing and dedicating a judicial prayer or curse with the purpose of seeking success in court almost certainly took place before the lawsuit or at some point during the judicial proceedings.[65] Yet it is not inconceivable that some of the judicial prayers and curses seeking retribution could have been written after the trial when the *defigens*, who saw himself as the injured party, had suffered as a result of perceived wrongdoing, regardless of whether the case ever reached the civic courts or not (although some cases certainly did).[66] Be that as it may, once the prayer is inscribed and dedicated it is then envisaged that the god,[67] who is perceived as the ultimate and majestic judicial authority, will help litigants achieve a successful outcome in their litigation or exact retribution if judicial procedures are abused.

Beside the law

Before entrusting their hopes of justice to the gods, archaic Greeks often had to engage with the legal realities of their *polis*. In the *Works and Days* the divine qualities of justice co-exist and are in conflict with its daily manifestations, as it was employed and often manipulated by litigants and judges. The abuse and corruption of the judicial system and in particular of the judges are a common and recurring motif in Hesiodic poetry.[68] Hesiod portrays himself as a member of a farming community where increasing agricultural output is the main economic strategy, and where allegiance and reciprocity between community members and especially relatives and neighbours are viewed as essential cushion mechanisms in case of an economic crisis or other emergencies. Hesiod relies on such material and human resources for his survival and well-being and suggests that the same resources are critical in maintaining social equilibrium. In this context it is not surprising that Hesiod devotes a great deal of attention to the land dispute and the ensuing lawsuit with his brother Perses. According to Hesiod, both he and Perses had inherited plots of land from their father. However, Hesiod claims that Perses appropriated a portion of Hesiod's land and used it as if it was his (ἤδη μὲν γὰρ κλῆρον ἐδασσάμεθ', ἀλλὰ τὰ πολλὰ ἁρπάζων ἐφόρεις 'we had already divided our inheritance, but you seized the greatest part and carried it off' *Op.* 37-8). The brothers went to court over this issue (in what constitutes another archaic example of voluntary submission of a dispute to arbitration)[69] and Perses won. The procedural details of the case have been extensively discussed in the past[70] and are of little interest for our purposes; what is far more important is Hesiod's reaction to the entire incident as well as the attitude towards law and the administration of justice that he displays.

The major targets of Hesiod's wrath are the judges. In Hesiod they are identified as 'lords' (βασιλῆας *Op.* 38; 248-64; *Th.* 81-90; 96; 434), who have to be understood not as absolute rulers but rather, as in Homer, 'big-men' or 'chieftains', i.e. the social and political elite of Hesiod's community.[71] He repeatedly calls them gift-devouring (δωροφάγοι *Op.* 39; 220-1; 262-3; cf. fr. 361 Merkelbach-West δῶρα θεοὺς πείθει, δῶρ' αἰδοίους βασιλῆας 'gifts move the gods and gifts persuade dreadful kings'), a rather explicit reference to the fees (cf. the trial depicted on the shield of Achilles, above) that these *basileis*/judges collected for their service. In the case of Hesiod, δωροφάγοι might also carry an insinuation

of corruption, although there is nowhere a direct charge of bribery.[72] Overall, Hesiod portrays a legal procedure that, in its major outlines, is in keeping with other archaic literary instances of adjudication by arbitration and especially with the trial on the shield of Achilles: the two quarrelling parties bring their dispute in front of a panel of arbiters (βασιλείς), consisting of some of the most socially and politically prominent members of the community. The litigants deposit a fee, the βασιλείς hear the case and at the end of the procedure the βασιλεύς who delivers the winning verdict (or the *basileis* as a group) collects the fee. Throughout Hesiod's poetry there is no reference or even allusion to specific statutes and justice is presumably meted out on the basis of customary norms, judicial precedent and the sense of fairness of the βασιλείς. Similarly to Homer, persuasion and rhetorical ability are portrayed by Hesiod as essential in the process towards the implementation of law and justice in the community. As we have already pointed out in our discussion of the concept of divine justice, in the *Theogony* (81-93) Hesiod singles out the ability to utter 'gracious words' (84, ἔπεˀ ἐκ στόματος ῥεῖ μείλιχα) as the greatest gift that the muses can bestow on a benevolent community leader (βασιλεύς). In the *agora* and the courtroom this kind leader is 'speaking confidently' (86, ἀσφαλέως ἀγορεύων), and his skill is used to settle even the greatest quarrel with straight judgements (86, ἰθείῃσι δίκῃσιν). Hence the skilfully-spoken *basileus* enjoys a supreme social position and a reputation of morality and fairness among the people. Similarly, rhetorical skills were critical in the litigants' attempt to present a persuasive case (cf. our comments above on oral delivery of judicial arguments in *Il*. 18.497-508). In the lawcourts and political assemblies of early archaic Greece oratory was supremely important.

Moreover, Hesiod also implies that observers could attend legal proceedings which, as in the trial depicted on the shield of Achilles, take place in public. Yet Hesiod offers a different perspective on this particular practice: attending court proceedings in the *agora* is not indicative of civic engagement but rather a sign of idleness and a waste of time performed at the expense of work (*Op.* 29).[73] Hesiod's attitude requires an explanation. He is not critical of the principle of administering justice in public but of the excessive, as he sees it, participation of outsiders in the proceedings. It is possible that Hesiod's stance on the public nature of adjudication was influenced by his personal circumstances: moblilizing a network of friends to voice their support during the trial must have been a critical factor in deciding the outcome of an arbitration of the type described by Hesiod.[74] As a result, Hesiod's resentment towards the legal system of his community

was perhaps partly due to the fact that during the dispute settlement process over the family inheritance, he had not been able to mobilize an adequate group of friends and supporters, as perhaps Perses did. Hence Hesiod's dismissive comments regarding the participation of the *dēmos* in the legal process can be interpreted as an indirect testimony to the widespread popular interest in legal matters and the informal pressure that spectators and supporters could exert on such occasions.

Hesiod's reactions to other aspects of his encounter with the justice system of his community are equally illuminating. Hesiod is the earliest first-hand testimony for the reception of law in everyday life; his case is not necessarily typical but is nonetheless indicative of strategies of coping with and resisting law that were potentially available to Greeks in the early archaic age. Even though Hesiod's references to the litigation with his brother are brief and at times indirect, it is evident that this experience largely shaped his conviction regarding the questionable state of the legal system in Askra. For Hesiod there is a clear cause and effect link between the combination of unfairness and greed,[75] displayed by the judges and some litigants (in this case Perses; see *Op*. 37-9; 213; 263-4; 315; 352) and the perversion of justice (in his particular case and beyond).

It should be noted that Hesiod is not the only archaic author who described such conditions. The Homeric *Hymn to Hermes* provides us with a mythological parallel to what could be perceived as manipulation of the courts of justice by a litigant: when Apollo and Hermes end up at the tribunal of Zeus (322ff.), in order to resolve their dispute regarding Hermes' theft of Apollo's cattle, the culprit resorts to trickery, lies and perjury (383; cf. 274) in an attempt to get himself acquitted. In this instance Hermes' deception does not pass unnoticed by all-knowing Zeus, but in a human court such ruses could have been potentially successful. Hesiod implies that his brother employed such improper means to gain a legal advantage, but, as we have already pointed out, he also exhibits a deep and sincere belief in the divine qualities of justice and he takes comfort in the fact that, as always, true justice will ultimately prevail. In other words, unable to win based on the facts of the case and to influence the external factors that largely determined the outcome of litigation, Hesiod attributes his defeat to embedded flaws of human nature and appeals to a higher power for retribution. With regard to justice Hesiod displays in the *Works and Days* a typical case of heteroglossia: despite his negative experience with the law, he still believes in the value of true justice.

This is a strategy of resistance to the adverse legal decision, a way for Hesiod to account for and come to terms with what he perceives as a

miscarriage of justice. This plea to divine power as an ultimate resort also indicates that, in all probability, no established procedure existed for Hesiod to appeal the verdict within the legal system of Askra; or that, if it did, the poet did not have enough confidence in the system to believe that a different outcome would be possible. Instead, Hesiod offers to his brother another alternative for a permanent arrangement of their dispute, i.e. a settlement outside the courts (*Op*. 35-6 ἀλλ᾽ αὖθι διακρινώμεθα νεῖκος ἰθείῃσι δίκῃς, αἵ τ᾽ ἐκ Διός εἰσιν ἄρισται 'let us settle our dispute here with straight judgment, which is from Zeus and is perfect'). As we have pointed out above in connection with *Il*. 12.421-3, an out-of-court settlement was a simple, flexible and quite possibly popular way of settling disputes and we can reasonably assume that only a percentage of disputes usually made it to the civic courts, although for obvious reasons such informal dispute settlements receive little attention in our extant sources, especially in state-enacted written laws.[76] Arriving at an understanding and a mutually acceptable settlement without resorting to the courts was for Hesiod, and undoubtedly other Greeks, another means to bypass what was considered as an unfair and potentially corrupt legal system.

Hence the poetry of Homer and Hesiod offers insights into a wide-ranging spectrum of perceptions and practices of justice in early archaic Greece. Both poets portray aspects of the formal legal system of their day as well as a variety of legal narratives. The fundamental difference between Homeric and Hesiodic justice lies not in formal proceedings of adjudication, which are portrayed as essentially the same, but in Hesiod's interpretation of his encounter with the legal system as well as the subsequent strategic deployment of alternative meanings of the law in his dealings with his brother and his community in general. Hence while in Homer justice reaffirms and reproduces the aristocratic ideal of social organization, for Hesiod law and justice are sites of ideological contestation. Hesiod's personal narrative of the inheritance dispute with his brother Perses, the ensuing adjudication with the adverse outcome for Hesiod, the discursive resistance to the official legal authorities in the wake of the trial's outcome, and finally his ambivalence between familial loyalty and legal rights are all clear examples of how statutory norms could be negotiated, adjusted and manipulated in specific everyday settings in early archaic Greece. Hesiod depicts law as a dynamic and highly contested social field that comprises several participants (himself, his brother, the judges, the community) as well as overlapping or contradictory interpretations, resources and interests. These multifaceted perspectives

testify to the law's complexity and unpredictability when viewed outside the fixed prescriptions of a statute or the strict official settings of the court.

Perceiving law (in the form of either written statutes or unwritten social norms) as an arbitrary social convention that could be resisted and eventually transformed is a necessary prerequisite for the transition of law from the sphere of traditional custom to a state of being a dynamic and flexible tool with the potential to become the agent of social change. Exactly how and when this transition took place remains unknown. But for ancient Greece, this perceptual shift is for the first time clearly attested in the work of Hesiod. By challenging the law and legal authorities, Hesiod and people like him paved the way for adaptation and change in the content of laws and the administration of justice in the courts and even social reform of a greater scale. Polyvalence, flexibility and adaptation will remain central features of the legislation and judicial systems of archaic and classical Greek communities.

Conclusion

Law was in early archaic Greece part and parcel of the socially highly stratified emerging *poleis*. The interpretation of social norms that constituted law in early archaic communities as well as the formal administration of justice were to a great extent under the command of the aristocracy, described by Homer and Hesiod as *gerontes* and *basileis*. Control of law and the judiciary was seen by the early archaic elites as an embedded birth right conferred by Zeus, who was also perceived as the ultimate source of justice. According to this model, law is powerful and hegemonic as well as inculcated, transcendent and immutable, and the community leaders and their pronouncements in courts are law's earthly incarnation. The commoners, depicted as litigants and interested spectators, were expected to follow the commands of the *gerontes*, although in reality social pressure exercised by the assembled audiences could have influenced the course of a trial. But while in Homer the aristocratic ideal of law reaffirms and reproduces the aristocratic paradigm of social organization, Hesiod reveals a perceptual and ideological shift: justice is now presented as a site of ideological conflict. The poetry of Hesiod documents the transition from the strict and hierarchical ideal of law in the Homeric world to alternative, and often resistant, perceptions of law and justice as well as to different levels of engagement with the law in the courts and everyday life. Hesiod subscribes to the ideal of divine justice but at the same time perceives the justice of the *basileis* as a perversion that has to be

ideologically resisted, if not directly and openly challenged. He copes with his dissatisfaction with the civic courts by depositing his hopes for justice with the gods and by inviting his brother to settle their affair by mutual compromise and outside the reach of the greedy judges. Most importantly, he does not appear to be cognizant of any prospects of active involvement in the lawmaking and the administration of justice (other than as litigant or witness/spectator/supporter) of his community for himself and his fellow-citizens. Yet, even though there is no evidence that Hesiod ever openly challenged the preponderance of the *basileis* in the legal system of his community, he nevertheless clearly presents us with an example of the pluralism of archaic Greek law, of how archaic Greeks could develop alternative legal narratives and negotiate traditional aristocratic models of law and justice in order to advance their own personal interests. Hesiod's poetry thus stands at the beginning of a series of transformations that changed the character of Greek law and led to the right of the *dēmos* both to enact statutory law and to mete out justice. Concrete evidence for both is provided for the first time with the emergence of written law and is examined in detail in the following chapters.

III

The Enactment of Law

Early archaic Greek literature reveals law as a complex and polymorphous social and cultural construct. Legal narratives in early archaic Greece range from the imposing and triumphant depiction of aristocratically controlled law in Homer, to the everyday legal manoeuvrings of Hesiod and his contemporaries. In early archaic literature there is no reference to written law, and there is good reason to assume that the decisions of the courts of the *gerontes* and *basileis* were based upon orally transmitted rules that were deeply embedded in popular morality. What Homer and Hesiod do not reveal, however, is the process whereby early archaic communities came to an agreement to regard a particular set of unwritten rules and customs as prescriptive and potentially enforceable. In the previous chapter I suggested as historically feasible the possibility that the social elites who were instrumental in the interpretation and implementation of these norms through their judgments in the courts were also largely responsible for their formulation and preservation through poetry and other means.

It is, however, with the emergence of written legal norms, the earliest extant specimens of which are dated around the middle of the seventh century, that we get a firmer idea of how law was created in some communities of archaic Greece. Many laws were now recorded[1] in imperishable (and sometimes in perishable) materials and were publicly displayed, often in a monumental fashion.[2] Both the written laws themselves as well as late archaic literature and other evidence suggest that despite the relatively low levels of legal literacy[3] in most parts of archaic Greece, written laws served as practical guidelines for legal matters in and out of the courts.

One should not assume of course that such a transition from orally transmitted and socially accepted norms to enacted legislation is necessarily coincidental with a complete transition from oral to written law, nor that it is universal or culturally mandatory. It has been ethnographically documented that societies (or sub-groups within a society) can have

perfectly functional legal systems while making only minimal use of writing or without ever acquiring a set of written, formally enacted statutes.[4] The evidence examined in the previous chapter suggests that many communities in early archaic Greece, before writing was used to record law, largely fall within that category. Moreover, even after the rediscovery of the written word by the Greeks it would appear that many Greek *poleis* never committed their laws and other civic enactments to writing. Our extant examples of written ordinances come only from a relatively small number of archaic communities. Even if we assume that the legislation of the lawgivers (for whom see further below), which currently survives in a fragmentary state in late literary traditions, was also written down and, in addition, allow for the chances of archaeological preservation and discovery, we are still left with a number of Greek communities that did not widely, if ever, use writing to record and preserve their laws. The reasons behind this lack of written legal norms in some parts of Greece, when writing was flourishing all around, are largely unknown, but it could simply be that in small communities with very few inhabitants a written set of laws was not practically necessary.[5] Be that as it may, the point we wish to make here is that there is nothing inherently developmental or teleological in the use of writing to record law. Some Greeks willingly wrote down and publicly displayed their laws and decrees and others did not. And even in the cases where law was committed to writing, traces of oral transmission of legal regulations are still visible. We should not, therefore, merely on the basis of the fact that some archaic Greek communities had written laws and others did not, assume that the latter had a less developed legal system or that they did not have law at all.

On the contrary, I would argue that the best way to understand the emergence of written law in archaic Greece is not as a stage in a developmental schema but as a point of break from traditional practices. For the purposes of a wider historical assessment, the transition from oral to written law in archaic Greece is of vital importance, not because writing is a great threshold between a lawless and a lawful society, but because archaic written enactments provide for the first time in Greek history firm evidence for the participation of the populace and other subdivisions of the citizenry in legislative procedures. In this view, written law does not lead to greater popular emancipation because of some inherent egalitarian qualities of the written word but rather it is the political emancipation of the lower classes, which occurred for a variety of reasons, that leads to their greater involvement in the enactment of law, with the emergence of written law

being a side-effect of the realization of the practical advantages of writing by many Greeks of the archaic era.

More specifically, the evidence for seventh century Greece (including written statutes and late traditions regarding the legal reforms of various lawgivers) suggests a widespread transition from a set of orally transmitted norms, whose validity was accepted by the majority of social actors and which were enforced usually by the decisions of the aristocratic courts and social pressure, to a set of written prescriptions that, as far as we know, were enacted through a deliberative process that at times involved a number of social groups. Deeply embedded custom is, in other words, now articulated as written statutory law. From that point on, our evidence (examined below) suggests that orally preserved norms and written laws frequently co-existed. Both customs and written enactments were recognized as valid law, in the sense that they were both, to a certain extent, socially accepted and implemented (or, at the very least, there was an attempt to implement them) in the courts.

Such a shift of emphasis from orally preserved norms to written law initially manifested itself more clearly on the substantive level as well as in the way ordinances were enacted; one can partly deduce from the extant evidence, especially the earliest written ordinances of the seventh century, that frequently judicial procedures and means of enforcement remained largely unchanged compared to earlier practices as documented by Homer and Hesiod. When effected, however, the change from customary norms to statutory prescriptions created through communal deliberation is nothing short of a dramatic departure on the perceptual level, an ideologically revolutionary moment: a widely shared but sometimes vaguely defined set of norms and values, embedded in popular traditions and handed down orally from previous generations, is seen as subject to change.[6] When that perception is supplemented by action, i.e. in this case of archaic Greek communities the promulgation of statutory law by large segments of the citizenry, then law is separated from these mental categories (i.e. religion) that are deemed untouchable. Law's content and interpretation are no more an exclusive right, but are up for grabs.

In the case of archaic Greece one cannot be certain of the exact point in time or the location when this perceptual shift and its partial application occurred, but it appears to have taken place sometime between the time of Hesiod and the earliest written enactments of the mid/late seventh century. As has been already pointed out, in the earliest archaic literature of Homer and Hesiod there appears to be in place a well-entrenched process of administration of justice but no mention of anything related to the

enactment of law. Moreover, the same evidence strongly suggests that the traditional aristocracy were very much in control of the legal system, including the articulation and implementation of legal norms. How exactly did parts of archaic Greece proceed from such conditions regarding the formulation of law and the administration of justice to the markedly different attitude regarding the creation and promulgation of law suggested by the emergence of written laws? Some late sources indicate that in certain instances lawgivers might have had something to do with the change. But it is not necessary to assume that the right to enact law was conceded to the *dēmos* by a lawgiver single-handedly; there are other possibilities, and the lawgivers might have been merely articulating an already existing practice. In addition, the active participation of the citizenry in deliberative and legislative processes is also attested for parts of archaic Greece (e.g. the communities in Crete) which did not appear to have employed the assistance of lawgivers in reforming their constitutions and legislations during the archaic period. Despite these uncertainties, and even though the extent of the involvement of ordinary citizens in the enactment of law might in some instances be limited or compromised, it still reflects a marked difference from the perceptions and practices of Homeric and Hesiodic Greece.

The wider historical context, including the social and political conditions that partly motivated such perceptual shifts and practical changes regarding the enactment of law, is also of great importance and will be given due consideration, to the extent that the evidence allows, in the discussion that follows. The remainder of this chapter will therefore examine specific manifestations of lawmaking procedures (meaning the drafting and formal enactment of laws and decrees with legal ramifications) in different cities across archaic Greece as well as their implications for our understanding of law, politics and social relationships in general. The basic tenet behind lawmaking as attested in written laws, i.e. that law is not immutable but subject to change, underlies the enactment of new law in replacement and/or amendment of the old. It is certain that such an understanding of law as a social convention did not emerge out of thin air, and it should be considered as part of a larger self-constitutive process that transformed the Dark Age groups of dwellers into distinctive political communities at the height of the archaic age. However, sanctioning formulas of extant written laws and the traditions regarding the archaic lawgivers suggest that written legal regulations were not always the simple product of a straightforward decision-making process on the part of the people, but that at times the process involved competing social forces and interests. Social conflict was

endemic in many parts of archaic Greece, and the means of creating law were symptomatic of the conditions within which such law was generated.

Creating the law

The earliest extant inscribed document with legal implications is the celebrated and somewhat misleadingly dubbed 'constitutional law' from Dreros in Crete, dated to the mid-late seventh century BC (*BCH* 61 (1937), 334 = *Nomima* I.81 = *IGT* 90). This civic decree appears to be complete and regulates various matters related primarily to the judicial and political powers of the *kosmoi*, i.e. the highest executive magistrates in Dreros.[7] Since its discovery and original publication in 1937 scholars have meticulously examined every aspect of the text with reference to the legal system as well as the political organization of the city-state (πόλις) of Dreros. The decree is of great significance for our understanding of law and justice in this corner of seventh century Crete and indicative of conditions in other parts of the island as well.[8] It is therefore worth quoting it here in full:

θιοσολόιον.[9] ἃδ᾽ ἔϝαδε | πόλι· ἐπεί κα κοσμησίε, | δέκα ϝετίον τὸν ἀϝτὸν μὴ κόσμεν· αἰ δὲ κοσμησίε, ὀ[π]ε δικακσίε | ἀϝτὸν ὀπῆλεν | διπλεῖ κἀϝτὸν ἄκρηστον | ἦμεν, | ἃς δόοι, | κὄτι κοσμησίε | μηδὲν ἧμην.
vacat ὁμόται δὲ | κόσμος | κοὶ δάμιοι | κοὶ ἴκατι | οἰ τᾶς πόλι[ος].

Gods. (?) When a man has been *kosmos*, the same man shall not be *kosmos* again for ten years. If he does act as *kosmos*, whatever judgments he gives, he shall owe double, and he shall lose his rights to office, and whatever he does as *kosmos* shall be nothing.
It shall be sworn by the *kosmos* [i.e. the body of *kosmoi*], and the *damioi* and the *ikati* of the city.

The reference to the *polis* as the issuing authority of the decree (ἃδ᾽ ἔϝαδε πόλι) is in itself remarkable. Is this the first clear indication of the existence of a fully-fledged, self-constitutive political community in archaic Greece? The term *polis* in this instance very probably designates all the members of the community with voting powers,[10] but one should be cautious in extracting wider inferences regarding the constitutional development of the archaic world in general. With particular reference to the enactment procedure, the opening formula ἃδ᾽ ἔϝαδε πόλι strongly

implies that the decree was sanctioned by the citizenry in a popular assembly with legislative powers. The citizenry is also presented as the sanctioning authority of legal regulations in several other inscribed statutes from archaic Crete and the rest of the Greek world. A near contemporary example to the earliest decree from Dreros is provided in a series of ordinances from Tiryns (variously dated to the late seventh to early sixth century; *AEph* (1975), 105-203, blocs 1-4, face A = *Nomima* I.78 = *IGT* 31). These ordinances stipulate the right of the assembled people to make executive decisions, and possibly enact civic decrees and laws: ḥό|πυι κα δοκεῖ τοῖ δάμοι ἀλιαίαν 'as it is decided by the people in an assembly'.[11] The citizens of a political community presented as an issuing authority of laws and other civic documents (e.g. decrees) can be designated by the comprehensive term *polis*, as in the decree from Dreros, or by some other all-encompassing term like *damos* (cf. the enactment from Tiryns) or the ethnic. Examples of this practice include the early/mid-sixth-century laws from Chios (ML 8 = *Nomima* I.62 = *IGT* 61) A, 1-2, which refer to the 'the laws of the people' (δήμο | ῥήτρας); a late sixth-century decree from Lyktos in Crete (*BCH* 109 (1985), 157 = *Nomima* I.12 = *IGT* 87 and 88), A.1, which commences with the sanctioning formula Ἔϝαδε Λυκτίοισι; and a law from Elis, discovered in Olympia (*IvO* 2 = *Nomima* I.23) and dated to the early fifth century, which designates itself as ἀ ϝρήτρα τοῖς ϝαλείοις.[12]

Nevertheless, the involvement of the citizenry of the archaic Greek communities in the enactment of legal norms might not have been quite so straightforward or uncomplicated as some of the sanctioning formulas suggest. It must be admitted that in archaic sources, including written laws and decrees, sometimes the exact meaning of institutional terms such as *polis*, *dēmos*, *agora* and *boulē*, as well as their actual composition, cannot be assumed beyond any doubt.[13] Let us stay for the moment with the earliest complete decree from Dreros examined above, a document which advertises itself in the opening formula as an enactment of the *polis*. The same document ends with a provision for an oath by the *kosmos*, the *damioi* and the *ikati* (= twenty) of the *polis*. The exact identity of the *damioi* and the *ikati* of the *polis* is unknown, but it is reasonable to assume that, at the very least, they were both subdivisions of the citizenry, designated in the sanctioning formula by the more collective *polis*. In all probability the oath in question was an oath of ratification and/or a pledge to abide by and enforce the clauses of the decree,[14] and it was sworn annually upon the assumption of office by a new board of *kosmoi*. At first glance the oath might appear redundant since the same decree has already been ratified

by the *polis*, yet such a scenario of multiple stages of endorsement is not unlikely in the context of an internally unstable political situation that appears to have been almost endemic in archaic Crete or in the case of a decree that was deemed very significant for the maintenance of the political survival of the community.

With particular reference to the legislative powers of the *dēmos* in the communities of ancient Crete one should also note that in the abridged version of the so-called Cretan *politeia* (*Pol.* 1272a11-13), Aristotle points out that in Crete the popular assembly did not have independent decision-making powers, but that it was entitled only to confirm by vote the resolutions of the highest executive magistrates, the *kosmoi* and the *gerousia*: ἐκκλησίας δὲ μετέχουσι πάντες, κυρία δ᾽ οὐδενός ἐστι ἀλλ᾽ ἢ συνεπιψηφίσαι τὰ δόξαντα τοῖς γέρουσι καὶ τοῖς κόσμοις ‘and all citizens have a share in the assembly, which has no powers except the function of confirming by vote the resolutions already endorsed by the council of the elders and the *kosmoi*’.

This Aristotelian passage is obviously not necessarily indicative of the conditions in seventh-century Dreros, although it is suggestive of the nature of aristocratic Cretan politics in general. Aristotle is here referring to the right of *probouleusis* of the *kosmoi* and *gerousia*, and regardless of what view one adopts towards the text of the Aristoteleian Cretan ‘*politeia*’,[15] there is no reason seriously to deny as a strong possibility that the *kosmoi* and the *gerousia* in Cretan polities possessed probouleutic powers. *Probouleusis* was the procedure whereby a restricted number of officials or citizens set the agenda of the meetings of the popular assembly and other legislative bodies and even drafted bills that were then approved, rejected or perhaps modified by the appropriate policy-making bodies. Besides Crete, the most famous example of *probouleusis* from the archaic period is the Spartan Great *Rhētra*, which will be discussed in more detail later in this chapter. Other examples very probably include the council of Four Hundred created by Solon[16] (βουλὴν δ᾽ ἐποίησε τετρακοσίους, ἑκατὸν ἐξ ἑκάστης φυλῆς, [Arist.] *Ath.* 8.4; cf. also Plu. *Sol*. 19.1-2 who specified its function as προβουλεύειν ἔταξε (i.e. Solon) τοῦ δήμου καὶ μηδὲν ἐᾶν ἀπροβούλευτον εἰς ἐκκλησίαν εἰσφέρεσθαι) and the tribal council attested in the sixth-century law from Chios (ML 8 = *Nomima* I.62 = *IGT* 61; C, 1-15 ἐκκαλέσθω ἐς | βολὴν τὴν δημ|οσίην· τῆι τρίτηι | ἐξ Ἑβδομαδαίων | βολὴ ἀγερέσθ|ω ἡ δημοσίη ἐ|πιθώιος λεκτ|ὴ πεντήϙοντ᾽ ἀπ|ὸ φυλῆς· τὰ τ᾽ ἄλ[λ|α] πρησσέτω τὰ δή|μο καὶ δίκα[ς ὁ | ϙό]σαι ἂν ἔκκλ|ητοι γένων[τ|αι] τοῖ μηνὸς π|άσας ‘Let him appeal to the council of the people. On the third

day after the Hebdomadaia let the people's council be assembled, with power to inflict penalties, consisting of fifty members from each tribe. Let it conduct the other business of the people and also [prepare? or adjudicate?] all those cases which have been appealed against during the month').[17]

Hence a reference to the *polis*, the assembly or the ethnic in the sanctioning formula of an extant written law or decree does not necessarily imply an unbridled authority on the part of the people to create legislation, since the formulation and the contents of laws might have been attributable to various boards of magistrates or other government bodies such as the *kosmoi*, the *gerousia* or a *probouleutic* council as the case might be. Moreover, once ratified and endorsed by the people, a document with legal ramifications was not necessarily invested with unquestionable authority, but special circumstances might have demanded the additional ratification of the same document at a later stage as, for example, quite possibly in the case of the earliest decree from Dreros. All these different eventualities of law endorsement were of course conditioned by the specific social and political circumstances of each polity, particularly in periods of civic conflict when normal legislative procedures were undermined or modified. Lawmaking was often a complicated and contentious business.

An examination of additional sanctioning formulas and other evidence on lawmaking from Crete and other parts of archaic Greece confirms this preliminary inference. Moreover, the sanctioning formulas of several archaic documents reveal an additional parameter of archaic lawmaking: that besides the restrictions imposed by *probouleusis*, the right to enact ordinances could have been shared by more than one authority within the community and that often the legislative powers of deliberative bodies overlapped. The archaic community of Dreros that has provided us with the earliest extant decree also provides the best illustration of this state of affairs. The excavations at the geometric temple of Apollo Delphinios in the heart of the civic centre at Dreros in Eastern Crete, have revealed a number of fragments of other inscriptions, many of them laws or decrees, contemporary with the better-known decree on the responsibilities of the *kosmoi* examined above.[18] It appears that all these inscribed documents were displayed on the walls of the temple, a practice not uncommon in archaic Crete. This physical arrangement must suggest that such written regulations were perceived by contemporary Drerians as being on a par with each other, in the sense that they were all endowed with the same degree of legal authority and warranted an equal standard of public display. Contrary to the seventh-century decree examined above, very little, in terms of substantive or procedural law, can be deduced from the remaining

fragments of other archaic inscriptions from Dreros. Yet the sanctioning formulas of some of these documents do survive and reveal a great deal about lawmaking procedures and legislative authority.

One such sanctioning formula suggests that the ordinance in question, dated to the late seventh century, was a joint enactment of the *polis* and the tribes (πόλι ἔϝαδε διαλήσασι πυλᾶσι) or at the very least that these two groups, whatever their exact composition, were both involved in the decree enactment process in some way.[19] Another late-seventh-century ordinance from Dreros was endorsed by a *hetarēia* (ἐ(τ)αρηιᾶν ἔϝαδε)[20] and a third by the unidentified ἰθυντᾶ[σι].[21] The range of deliberative and enactment authority revealed by this relatively small number of enactments in this minor community in seventh-century Crete is astonishing. Four documents reveal no fewer than seven civic bodies (*polis*, *tribes*, *hetareia*, ἰθυντᾶ[σι], *kosmoi*, *damioi* and the 'twenty' (ϝκατι) of the *polis*) with some involvement in the process of formally enacting or ratifying legally binding ordinances. If Aristotle's passage from the *Politics* quoted above to some extent also reflects, as one might plausibly expect, the conditions in some archaic Cretan communities, and assuming that a *gerousia* or an equivalent council of elders existed in archaic Dreros (some commentators argue that this is the identity of the *ikati* of the *polis*, see *Nomima* I.81 for references) then the council of elders very possibly also made a contribution to formulating legal norms. Overall, and despite the fact that our knowledge of the legal system and especially of legislative procedures in archaic Dreros remains very fragmentary, it is safe to infer that in this small archaic community of Eastern Crete different social groups and political authorities could partake in the production of law and other civic ordinances.[22]

This somewhat generic conclusion needs further clarification: one must consider the possibility that the enactment authority of the tribes, the *hetarēiai* and all other subdivisions of the *polis* of Dreros that had a share in the making of ordinances did not translate solely into the promulgation or ratification (e.g. as in the oath clause in the earliest decree from Dreros) of enactments that were binding for the entire community, but perhaps such authority also (or at times solely) manifested itself in the promulgation of legal norms concerning these particular groups alone. In other words, what we might be dealing with in the case of some archaic inscriptions from Dreros and other parts of Greece (see the following discussion) are decrees of legal character and ramifications which dealt with specific matters of concern to the groups that issued them.

Indeed there is evidence concerning other parts of archaic Greece outside Crete to corroborate the latter suggestion. First, a recently published late

sixth-century inscription from Paros (Matthaiou 2000-3) contains a law forbidding various forms of burial and monument construction in a cemetery that belonged to a phratry (ll. 14-15 τοῖ[ν φρη]τ̣έρον; see Matthaiou's comments, op. cit., for the security of the restoration). The law itself, which is almost complete, does not mention any issuing authority, but it is reasonable to assume that since it regulated the use of land property belonging to a phratry, and quite possibly it was displayed in the location in question, it was issued by the phratry itself.[23] If this is the case, it can further be assumed that this phratry ordinance existed in the context of other enactments and laws, many no doubt endorsed by more comprehensive legislative bodies and with validity for the entire community. Secondly, and with reference to archaic Athens, according to the Roman jurist Gaius as quoted in Justinian's *Digest* (*Dig*. 47.22.4 = Ruschenbusch 1966 F 76a),[24] Solon allowed *phratries*, *orgeones* and other citizen associations to introduce and enforce rules that regulated their internal functioning and the relationships of their members, on the condition that such regulations did not contravene state law. Similarly to the situation in Dreros, this passage, if not entirely anachronistic, suggests that multiple levels of legislative authority were in operation in early sixth-century Athens. Indeed it would make great sense if, in the context of archaic Attica, tribal and other citizen associations and social groups were often allowed to regulate their operation. Equally important is the attempt on the part of civic authorities, alluded to in the passage from Justinian's *Digest*, to acknowledge formally and partly co-ordinate the legislation emanating from all these different groups, in the sense that ultimately all these legal norms had to be in keeping with other civic legislation (presumably enacted by more comprehensive legislative bodies). As I have already suggested, one can reasonably argue that some of the sanctioning formulas of the seventh-century ordinances from Dreros (e.g. ἐ(τ)αρηιᾶν ἔϝαδε) quite possibly suggest similar conditions, i.e. regulations issued by a subdivision of the citizenry that were applicable only to that group alone and which co-existed with state-enacted law.

Sanctioning formulas of archaic ordinances from Crete and other parts of the Greek world further illuminate enactment procedures. A legal contract for the scribe Spensithios, found in the area of Arcades in Crete and dating to the middle of the sixth century BC, is enacted by the Dataleis and the *polis*, represented by five members of each tribe (Θιοί· ἔϝαδε Δαταλεῦσι καί ἐσπένσαμες πόλις Σπενσιθίωι ἀπὸ πυλᾶν πέντε ἀπ' ἐκάστας).[25] Any interpretation of this sanctioning formula depends on the meaning of the *Dataleis*. Is it a reference to the citizenry of the community[26]

or to a wider region identified as Dattalla?[27] And if so, what was the exact relationship of Dattalla with the *polis* mentioned in the sanctioning formula? If we accept that the Dataleis and the *polis* refer to different communities, their suggested involvement in the enactment of the contract might be explained on the grounds of political dependence (of the Dataleis to the *polis*?) of some kind and the possibility that the scribe Spensithios had residence and exercised official duties in the dependent community, so that the involvement of both communities in the endorsment of his contract was considered necessary. An alternative possibility is that the *Dataleis* were a subdivision of the *polis*, perhaps a *startos*, clan or tribe. In such case, the contract was endorsed by these *Dataleis* and five representatives from each tribe in the name of the *polis*, hence plausibly invoking an enactment procedure somewhat parallel in principle to the one possibly attested in Dreros (*BCH* 70 (1946), 590, no. 2 (= *Nomima* I.64 = *IGT* 91)) and discussed above. Other interpretations have been advanced,[28] but regardless of the reading that one favours, there must be little doubt that what we witness in the contract for the scribe Spensithios is an at least two-stage endorsement procedure, and possibly a joint legislative act of different communities or of different sections of the citizenry of the same community.

Outside Crete, the so-called 'Bronze Pappadakis', a late sixth-century law on land distribution discovered in the border area of ancient Aetolia and Lokris (*IG* IX 1^2 3.609 = *Nomima* I.44 = *IGT* 47 and 48; c. 525-500 BC), envisages a situation whereby three different constitutional bodies could be involved in the enactment of law. More specifically, this document prescribes heavy penalties (thus suggesting that strict adherence to the provisions of the law was recommended and implying that there have been previous attempts to overhaul land tenure legislation) for whoever proposed a new statute dealing with the issue of land division or brought the matter forward to a formal vote in the council of the elders, the popular assembly or the ἀποκλεσία[29] (ll. 9-11: hόστις δὲ δαιθμὸν ἐνφέρει ἒ ψᾶφον διαφέροι ἐν πρείγαι ἒ ϝν πόλι ἒ ϝν ἀποκλεσίαι). Several aspects of this clause remain unclear, e.g. whether the council of the elders, the popular assembly and the *apoklesia* could act single-handedly or only in conjunction in promulgating new legislation. Nonetheless there should be little doubt that all three played a part in lawmaking procedures of this late archaic community. Moreover, a late archaic/early classical law discovered at Halikarnassos (*GIBM* IV 886 = *Nomima* I.19 = *IGT* 84, early to mid-fifth century) is a joint decision of two city-states and an individual, endorsed by the *syllogos* (assembly) of Halikarnasseans and Salmakiteans

and Lygdamis: Τάδε ὁ σύλλο[γ]ος ἐβολεύσατο | ὁ ʿΑλικαρνατέ[ω]ν καὶ Σαλμακιτέων καὶ Λύγδαμις.[30] This document, as the sanctioning formula and its contents clearly indicate, transcends the limits of civic legislation, and it is quite possibly the binding decision of two communities and an individual of power and influence, perhaps a local dynast. The historical context is obscure, and the reasons behind this enactment must originate in interstate relations of early fifth-century Ionia. For the purposes of our survey of deliberative and legislative procedures, it will suffice to point out that the endorsement arrangement is reminiscent of the opening formula of the Spensithios contract, the creation of which also might have involved two different communities. It also suggests that, in some archaic communities at least, partial relegation or even abdication of civic legislative authority was deemed acceptable in special circumstances.

The practice of shared and/or overlapping authority in lawmaking can also be detected in cases of amendment or annulment of an existing law. An example of such law procedures is provided by the famous archaic Spartan Great *Rhētra*.[31] As transmitted by Plutarch, the *rhētra* gives ultimate power of political decision-making, presumably including the right to endorse legislation, to the *damos*, Plu. *Lyc*. 6.1: δάμῳ δὲ τὰν κυρίαν ἦμεν καὶ κράτος;[32] cf. Tyrtaios 4W.5-9 ἔπειτα δὲ δημότας ἄνδρας εὐθείαις ῥήτραις ἀνταπαμειβομένους 'it is for the common people to respond with straight decisions'. However, the same document contains two provisions that compromise what at first glance appears as an unequivocal recognition of the *damos*' supreme decision-making power. First, the clause regarding the powers of the *gerousia* (council of elders, including the two kings): they are to introduce proposals (εἰσφέρειν) and withdraw (ἀφίστασθαι). This provision very possibly refers to the *probouleutic* powers of the *gerousia*, i.e. its power to draft and submit bills or other motions to the popular assembly.[33] Secondly, there is the so-called rider, considered by Plutarch as a later addition, but probably an integral part of the original *rhētra*.[34] In this clause, it is stipulated that if the *damos* reached a crooked decision, the *gerontes* and the *archagetai* could annul it:[35] Plu. *Lyc*. 6.8 αἰ δὲ σκολιὰν ὁ δᾶμος ἔροιτο, τοὺς πρεσβυγενέας καὶ ἀρχαγέτας ἀποστατῆρας ἦμεν. What the *rhētra* seems to envisage is a multi-stage decision-making process in archaic Sparta. Many details remain unclear and disputed but, to summarize the preceding discussion, we can be quite confident that the process involved the drafting of laws[36] and decrees by the political elite in the *gerousia*, their endorsement or rejection by the *damos* and finally the power of the *gerousia* and the *archagetai* to reverse the *damos*' decisions if that was deemed appropriate. This complex

legislative procedure, and especially the *probouleutic* and annulment powers of the *gerousia* and the *archagetai*, effectively undermined the seemingly unrestrained decision-making powers of the *damos* as declared in the *rhētra* itself. Such features of the Great *Rhētra* are largely in keeping with what we have observed so far regarding lawmaking procedures in other parts of archaic Greece.

Besides the Spartan *rhētra*, clauses regarding the modification or annulment of a law are incorporated in laws from other parts of archaic Greece.[37] For example, a late sixth-century law of Elis (*IvO* 7 = *Nomima* I.109 = *IGT* 43), discovered at Olympia, reveals two civic authorities (the council of five hundred and the *dēmos* in plenary assembly) whose consent was required in any amendment of statutory law. It prescribes that a written law can be modified after the council of five hundred and the majority of the *dēmos* have concurred, ll. 3-5: Τ̃ον δέ κα γραφέον, ὅ τι δοκέοι καλιτέρος ἔχεν πὸ‹τ› τὸν θεὸν, ἐξαγρέον καὶ ἐνποιο̃ν σὺν βολαῖ πεντακατίον ἀϝλανέος καὶ δάμοι πλεθύοντι δινακοι· (δινα)κοι δέ κα ἐν τρίτον, αἴ τι ἐνποιοῖ αἴτ᾽ ἐξαγρέοι.[38] Another late sixth-century law of Elis (*IvO* 3 = *Nomima* I.108 = *IGT* 38), also found at Olympia, ends with a fragmentary clause that very probably refers to the necessary conditions for amending a written law, l. 8 ἄνευς βολὰν καὶ ζᾶμον πλαθύοντα ('without the consent of the Council and the majority of the people'). Such provisions are very probably a reflection of the fact that in Elis, similarly to other archaic Greek communities, both the council and the *dēmos* had a share in the legislative processes of their *polis*, possibly in a *probouleutic* (council) and endorsing (*dēmos*) capacity.

Finally, one might add to this dossier of examples of law amendment procedures two laws from western Lokris. The first is the late sixth-century law on land distribution (*IG* IX 1^2 3.609 = *Nomima* I.44 = *IGT* 47 and 48; c. 525-500 BC) discussed above. It has been noted that this law attempts to strongly deter any initiatives towards new legislation on the issue of land division. However, it also spells out the conditions under which an amendment would be acceptable, namely the introduction, under the pressure of war, of at least two hundred new ἔπιϝοικοι ('settlers'), a measure which must meet with the approval of the 'one hundred and one men of the aristocracy' (ll. 7-8 δόξξαι ἀνδράσιν hενὶ κἐκατὸν ἀριστίνδαν). The second example of law amendment at Lokris comes from a mid-fifth-century law from Naupactos, *IG* IX 1^2 3.718 (= *Nomima* I.43), which refers to the internal organization of a new colony. The law includes clauses regarding the right of *prodikia* (i.e. the right to receive justice first) for the colonists of Naupactos; it also stipulates against any

violation (in the literal sense of material damage, διαφθείρει) of the stone on which the law is inscribed, unless it is jointly decided by the assembly of one thousand (ὁποντίον τε χίλιον πλέθαι καὶ Ναυπακτίον τῶν ἐπιϝοίϙον πλέθαι) at Opous (one of the founding cities) and (the assembly?) of the colonists in Naupaktos.[39]

Hence written statutes frequently suggest a wide range of lawmaking procedures in the archaic *poleis*. Often laws and other enactments were endorsed by a single legislative authority, at times after they have been subjected to the *probouleusis* of a council. On other occasions sanctioning formulas of archaic ordinances suggest multiple stages of lawmaking procedure whereby different civic bodies had to endorse or amend a law before it became officially promulgated. After legal regulations were thus created, often they were subsequently publicly displayed in written form. It was not unusual for the civic bodies/social groups involved in the enactment of a particular law to be duly acknowledged as issuing authorities in the sanctioning formulas, but this is not always the case, and there are extant several archaic written laws that bear no indication as to the issuing authority or the exact procedure followed for their enactment. How can this apparent discrepancy be accounted for? In other words, how can one explain the fact that in some written laws and degrees the issuing authority is explicitly acknowledged, while others contain merely substantive legal provisions? A related issue is the apparent discrepancy between extant written laws, which at first glance appear as single enactments dealing with quite specific issues, and the classical and post-classical literary traditions regarding archaic large-scale codification, largely connected with the lawgivers. Before moving on to our analysis of the archaic lawgivers, it is worth considering these particular features of the legislative output of many archaic communities.

The fragmentary preservation of many extant written laws can partly account for their lack of references to a legislative authority; it can be argued with confidence that at least some of the lost opening sections of these laws contained sanctioning formulas indicating the legislative bodies that enacted them. But this explanation cannot account for a number of enactments that are seemingly complete and yet include no references to deliberative and legislative procedures. With particular reference to the written laws of archaic Gortyn, Paula Perlman has recently argued that 'the absence of an enactment formula suggests that neither the *polis* as a political community nor its elite institutions were willing (or able?) to take responsibility for the formulation and enactment of laws even though the laws themselves suggest an advance in the

authority over the lives of its members'.[40] The same inference could of course be applied to any other archaic polity whose written laws bear no indication of the lawmaking process that generated them. Such a negative argument fails to account for the very existence and status of these laws. After all, laws are not created out of thin air, and even when there is no mention of their legislative authority, somebody must have been responsible for their drafting and enactment.

I suggest that the lack of references to lawmaking procedures in some written laws is not necessarily at odds with the pattern of law-enactment that we have detected thus far. The content and display patterns (e.g. in clusters on the walls of temples) of written laws suggest that in many instances archaic statutes were perceived as organically interrelated. In the case of archaic and early classical Gortyn, for instance, laws that were displayed in proximity to each other are often thematically germane and they even include indirect cross-references to 'what is written', e.g. to relevant clauses in other sections of the same law or in older written laws.[41] At times, such references to older legislation are quite explicit, to the extent that some approximate verbatim quotations (e.g. *IC* IV 75A and *IC* IV 81; see the discussion in Davies 1996). Similarly, cross-references to previous laws are also encountered in the legislation of other communities in archaic Greece.[42] With particular reference to Gortyn, such attempts to connect legislation enacted in different periods can be understood as a policy, deliberately adopted by the legislative and administrative authorities and practically expressed in the inclusion of cross-references to earlier legal provisions, to maximize the use (not necessarily by all, but at least by those who were intimately involved with the administration of justice, e.g. judges and *mnamones*) and effectiveness of said legislation. Now much of this legislation is fragmentary but, even when seemingly complete or nearly complete (e.g. the 'Gortyn Law Code', for which see further below), at times it bears no indication as to the enacting authority. However, the apparent effort of the legislative authorities of Gortyn to provide for the implementation of the laws would be at odds with the assumption, on the basis of the lack of a sanctioning formula, that these same authorities assumed no responsibility in the drafting and enacting of civic legislation.

Moreover, we should also consider the possibility that some of these laws represent the legislative output of a particular time period, enacted perhaps during the term of office of a particular group of magistrates,[43] which therefore made them appropriate for display in close proximity to each other either on the walls of temples, as was often the case in archaic Gortyn, or in some other location or building. In such cases, it might have

been considered sufficient to indicate the lawmaking authority on merely one of the laws that belonged to the same 'set', without repeating it in the opening clauses of the rest. At any event, even though many laws do not specify their sanctioning authority, it is reasonable to assume that in instances where other examples of civic legislation from the same community do survive, the laws lacking any reference to legislative authority were, in some cases at least, potentially enacted by the same civic bodies that appear responsible for lawmaking in other laws.[44] Much of the above discussion is of course conjectural, but it is, I believe, in keeping with extant written statutes and therefore preferable to agnostic views regarding the control of legislative power in archaic Greek polities.

These features of some extant archaic laws have a bearing on the debate over whether the literary tradition, according to which in some archaic communities there existed a sustained attempt to systematize and codify legislation, has any correspondence to the historical conditions of archaic Greece. Classical and late antique sources usually associate such attempts with the lawgivers, but the legislation and other historical information attributed to these figures are often problematic in many respects (see further on the lawgivers below). Moreover, the extant written enactments complicate the picture even further; on many occasions, such enactments appear to have a very narrow thematic scope which, according to some scholars, suggests that they were specific ad hoc responses dealing with particular problems.[45] The only legal inscriptions that could, in terms of size at least, qualify as 'codes', i.e. *IC* IV 72 (so-called 'Gortyn Law Code' or 'Great Code', see further below) and *IC* IV 41, *IC* IV 75 ('Little Codes'), come from Gortyn and turn out not to be codes, strictly speaking, but rather unsystematic collections of provisions dealing with a wide range of issues (Davies 1996).[46] Recently, Jonathan Hall (2006, 134) has suggested two possible solutions for the discrepancy between literary and epigraphic evidence regarding codification: (a) that the idea of codification of statutes by lawgivers 'is a philosophical and historiographical tradition of the fifth and fourth centuries' and (b) that 'our early epigraphic evidence may not constitute a truly representative sample'. A third, and perhaps more realistic, possibility is suggested by some the evidence presented above (i.e. cross-references, public display patterns perhaps in thematic clusters or in accordance with a chronological principle) for an active 'dialogue' between the individual statutes, whether they formed part of a collection of enactments or not. The emphasis of some historians on the apparent ad hoc nature of extant written archaic laws is in reality overstating a common aspect of statutory law. By necessity and nature, legislation is at the same

time somewhat generic and specific; or, as the common statement goes, law's 'generality must be specific' (Neumann 1957, 28). But that does not mean that such laws stand in isolation from a wider body of legal provisions, even if one admits that such a body of provisions does not amount to codification.[47]

The preceding discussion of multiple, overlapping and sometimes conflicting legislative authorities within the same community might appear somewhat unorthodox. Most of us are without a doubt familiar with the fact that professional and social associations often employ and enforce their own set of internal regulations, but very few would ever consider examining these regulations as a true feature of law. This is because as citizens of nation-states of the twenty-first century we are conditioned to think of law as state law, just as we often think of the 'Rule of Law' as the natural and pre-ordained state of things.[48] Law is thus considered an inextricable extension of the state. But in reality there are numerous examples of informally established networks of laws that regulate the activities of small groups and associations that are bound by ethnic, social or professional ties.[49] Such laws are often in contradiction to formally enacted state law, and for that reason state authorities often attempt to appropriate, undermine or totally eradicate them. But such factors rarely make any difference to the effect and authority that such networks of micro-laws enjoy among the members of the groups who employ them. If anything, the first loyalty of these individuals is often to the laws of their group rather than to the official state laws. In the case of archaic Greek communities, enactments that are endorsed by subdivisions of the entire citizenry might thus reflect a similar autonomous legislative activity on the part of these groups and testify to the diversity, complexity and dissemination of legislative power in archaic Greece.

The lawgivers

Besides corroborating the picture of shared and/or overlapping legislative authority in some communities in archaic Greece, the instances of *probouleusis* and law amendment discussed in the previous section further underline the perception of law as contestable and subject to change. Such attitudes towards law are nowhere better attested than in the stories of the archaic lawgivers.[50] In the case of the lawgivers law does not merely change but also clearly becomes a central feature of social conflict and a catalyst for political, economic and moral reform.

The evidence regarding the archaic lawgivers is, however, highly problematic. The two most obvious and troubling issues are the historicity of the individuals in question and the content of their legislation. It is without a doubt that many of these figures were in later periods of Greek history enshrouded in myth and legend and that many additional elements were attached to the tales of their lives and legislation, including laws that were considered by many genuinely archaic but which very probably were late creations anachronistically attributed to the archaic period. The ingenuity of modern scholars has uncovered many of these romanticizing elements, but, despite the various anachronisms and late antique misconceptions, one cannot help noticing that many of the issues raised in the laws of lawgivers such as Zaleucus, Charondas and Solon and in the extant archaic literature (e.g. Hesiod) do correspond to concerns reflected in the extant written laws. Such issues cover almost the entire gamut of social and economic life, including the decorum and behaviour of individuals, land tenure, and the responsibilities of litigants, witnesses and judges in court. It is not accidental that most of the lawgivers' output related to these matters is also considered by modern scholars as genuine, if not in the sense, in the case of references to these laws in later literary sources, of being verbatim quotations of the original archaic laws, but at least as being representative of the intentions and spirit of the laws in question.

A salient feature of ancient traditions regarding the lawgivers is that most of these figures were highly respected and were perceived as unbiased within the communities that invited them to legislate. More specifically, lawgivers are often presented as arbitrators in an attempt to reconcile conflicting class interests that threaten the social stability of their communities. The most notable example of an appointment of a lawgiver as a result of social strife is Solon. Since Athens eventually became a democracy, a hegemonic power and a magnet for intellectuals and writers of all genres and political persuasions, Solon is perhaps the most notable example of an archaic lawgiver whose life and achievements were submitted to a long process of ideological re-elaboration during the classical and post-classical periods. This process eventually resulted in the creation of an elaborate Solonian saga, a saga which contains elements that have little or no connection with early sixth-century BC conditions. Nevertheless, a rather substantial segment of Solon's poetry does survive which, in conjunction with other sources, allows us partly to reconstruct the challenges that Solon faced.

There is little doubt, among ancient historians, of the existence of a deep and seemingly endemic social and economic crisis that blighted Athens at

the end of the seventh and the beginning of the sixth century, although the exact nature of this crisis is still hotly disputed.[51] In the introduction of his account to the reforms of Solon, the author of the *Athēnaiōn Politeia* (5.2)[52] claims that 'when such was the organization of the state and many were enslaved to the few, the people resisted the men of note (ἀντέστη τοῖς γνωρίμοις ὁ δῆμος). After bitter strife (στάσεως) and protracted opposition to one another, they agreed to choose Solon as reconciler (διαλλακτὴν) and *archōn*, and they entrusted the state to him'. The lawgiver himself openly or implicitly acknowledges these conditions in several of his poetic fragments. In fr. 37 he asserts that he 'stood in no-man's-land between them (i.e. the rich and the poor) like a boundary marker'; and in fr. 36.18-20 he claims 'I wrote laws for the lower and upper classes alike, providing straight justice for each person' (θεσμοὺς δ' ὁμοίως τῷ κακῷ τε κἀγαθῷ εὐθεῖαν εἰς ἕκαστον ἁρμόσας δίκην ἔγραψα).[53]

These verses refer to Solon's own legislation and not the conditions of his appointment as mediator. There can be little doubt that Solon was a somewhat biased reporter of his personal achievements, and one can reasonably expect an element of rhetorical exaggeration in his poetry. But his insistent claims of having followed the middle route between the quarrelling social classes would have been out of place unless they were meant to be seen as a means of portraying his legislation in accordance with and in justification of his reputation before his appointment. In other words, it makes more sense to interpret Solon fr. 36.18-20 in the light of [Arist.] *Ath.* 5.2, i.e. to infer that Solon was appointed lawgiver as a result of a compromise between social classes because he was thought to be impartial and as a result in his poetry he portrays himself as such. Moreover, and because of the acute social crisis afflicting Athens, Solon's appointment and legislative reforms could hardly have taken place if he did not really enjoy, as the passage in [Arist.] *Ath.* 5.2 quoted above implies, the trust of both the rich and the poor. Although information on the exact procedure adopted towards his formal appointment as *archōn* with special powers is scarce, it is very likely that it was officially endorsed by the interested and conflicting social groups of archaic Athens, perhaps in a manner similar to the joint legislative ventures from other parts of the Greek world attested in some extant written laws.

Comparably to Solon, Pittacus of Mytilene was entrusted with extraordinary political powers as a result of social crisis, although his appointment appears to have been more controversial than that of Solon. In *Politics* 1285a36-1285b1 Aristotle claims that Pittacus was initially elected *aisymnētēs* (an office designed to deal with emergencies) in the

early sixth century (traditional dates of his reign: 587-579 BC) by the people of Mytilene in order to resist various aristocratic factions, in one of which the poet Alcaeus played an integral role.[54] Besides having the backing of the people, Pittacus also enjoyed, at least at some point in his career, the support of some members of the aristocracy who opposed the faction that Alcaeus supported. Thus Alc. fr. 70 claims that Pittacus was married into the family of the Penthilidae, one of the ruling families in Mytilene and also that at some point before he became *aisymnētēs* he had the support of Myrsilus, another aristocrat who ruled as tyrant. Pittacus' rise to power and his legislative reforms were therefore largely the fruit of active support across the social board. Pittacus undoubtedly exploited his popularity to enforce his political rule, mediate in social conflict and introduce new legislation regulating the behaviour of citizens, such as the laws against excessive drinking (Arist. *Pol*. 1274b17-23).[55]

To be sure, late literary traditions do not present all archaic lawgivers as mediators of fully-fledged social strife, but even in such cases the evidence regarding their laws is quite illuminating notwithstanding. According to these late traditions, the earliest among the lawgivers, Zaleucus in Epizephyrian Locri was active in c. 660 BC, i.e. he was almost contemporary with the earliest extant written ordinances from Crete.[56] Ephorus (*FGrHist* 70 F 139) claims that Zaleucus restricted the powers of arbitrary interpretation of the law as well as the imposition of inconsistent penalties by the judges (τῶν πρότερων τὰς ζημίας τοῖς δικασταῖς ἐπιτρεψάντων ὁρίζειν ἐφ᾽ ἑκάστοις τοῖς ἀδικήμασιν, ἐκεῖνος ἐν τοῖς νόμοις διώρισεν, ἡγούμενος τὰς μὲν γνώμας τῶν δικαστῶν οὐχὶ τὰς αὐτὰς εἶναι περὶ τῶν αὐτῶν, δεῖν δὲ τὰς αὐτὰς εἶναι) by spelling out specific penalties for particular crimes. A number of other laws are also attributed to Zaleucus, including a law simplifying the language of contracts (Ephorus *FGrHist* 70 F 139), and his sumptuary legislation regarding women's behaviour, luxury and other issues (D.S. 12.20-1).[57]

Although there is no evidence for open social conflict in Epizephyrian Locri before the legislation of Zaleucus, it is worth noting that parts of his legislation, especially the measures aimed at harmonizing the decisions of the courts and restricting the powers of the judges, are in correspondence with concerns raised in archaic literature and written laws. Hesiod repeatedly voices his grievances over the decision of the judicial authorities in the lawsuit against his brother, while the earliest complete decree from Dreros, discussed above, provides limitations to the judicial powers of the highest executive magistrates of the community who have been in violation of the ten-year office-iteration ban. Evidence regarding other early archaic

lawgivers also echoes issues and concerns that surface in some written laws. Charondas of Catana (very possibly active during the sixth century) was purportedly the author of a law against false testimony and, more specifically, the first to establish the procedure of ἐπίσκηψις, i.e. the formal notification of one's intent to prosecute a witness for false testimony (Arist. *Pol*. 1274b5-7: αἱ δίκαι τῶν ψευδομαρτυριῶν (πρῶτος γὰρ ἐποίησε τὴν ἐπίσκηψιν). Moreover, Charondas introduced a law imposing a higher fine on the rich, compared to the one in place for the poor, for not serving in the courts (Arist. *Pol*. 1297a21-4: καὶ περὶ τὰ δικαστήρια τοῖς μὲν εὐπόροις εἶναι ζημίαν ἂν μὴ δικάζωσι, τοῖς δ' ἀπόροις ἄδειαν, ἢ τοῖς μὲν μεγάλην τοῖς δὲ μικράν, ὥσπερ ἐν τοῖς Χαρώνδου νόμοις). According to other sources (D.S. 12.12-19), Charondas also legislated on issues of morality, marriage, orphanhood, inheritance and military service.[58]

Hence late traditions regarding the archaic lawgivers suggest that their appointment was often the result of a social compromise and that their legislation aimed at effectively regulating the issues that afflicted social relationships and exacerbated civic strife. At first sight, one might reasonably object that the ancient sources emphasize the multiple social influences that led to the appointment of the lawgivers because they were extraordinary, unusual and occurred as a result of acute crisis. But as we have already seen, some written enactments suggest that lawmaking in archaic Greece was a complex process that very often necessitated the active involvement of various boards of officials and social groups with legislative authority. Although there was no universally accepted standard, in the context of almost endemic conditions of social struggle in many parts of archaic Greece, very often the process of law-production, from the drafting of the bills to their formal enactment, entailed that norms and provisions, before becoming part of civic legislation, were subjected to several layers of scrutiny and deliberation by the *dēmos*, the aristocratic council and at times other institutional bodies or subdivisions of the population. Viewed in this context, the appointment of many lawgivers becomes more comprehensible: in principle there was nothing unusual when in a number of archaic communities the *dēmos* and the aristocracy agreed to endow a widely acceptable individual with extraordinary political and legislative powers. What was unusual in the case of the lawgivers was the circumvention of the normal lawmaking procedures already in place in a particular *polis* with the appointment of an individual with restricted tenure and exceptional powers to promulgate law.

Conclusion

The preceding overview of the evidence regarding legislative activity during the archaic period, including sanctioning formulas from extant archaic laws and the evidence for the archaic lawgivers, reveals some intriguing patterns of law-enactment in archaic Greece. On the present state of the evidence it is doubtful whether Greeks of the archaic period made a distinction (in existence in classical Athens, but see the comments by MacDowell 1976, 45) between the provisions contained in statutory law and the legal regulations embodied in enactments of more restricted scope (decrees, contracts). Hence as far as we know, in the archaic communities from which evidence survives legal norms contained in laws, decrees and contracts were in principle invested with the same degree of authority in popular morality and in their application in the courts of justice and everyday settings.

However, a distinction between statutory laws and decrees might have been in practice acknowledged in the enactment procedure of such ordinances. One of the main points raised in the preceding discussion has been the diffusion of legislative power (not in the strict sense of creating statutory law, but in the wider meaning of creating legal norms) in some archaic communities among a number of social groups and constitutional bodies. Hence, in addition to the legislative powers of the entire citizenry attested in some polities, at times subdivisions of the *dēmos* (e.g. in *BCH* 61 (1937), 334 = *Nomima* I.81 = *IGT* 90) appear to be involved in the ratification of an ordinance that was of interest to the entire community. Yet on other occasions (e.g. the phratry law from Paros and possibly some of the fragmentary enactments from Dreros discussed above) the evidence suggests that kinship and other social groups (e.g. *hetaireiai*) had the power to generate enactments which regulated matters of special interest. Additional evidence will undoubtedly illuminate these matters further. Sweeping generalizations should of course be avoided, however the emerging pattern suggests that in the context of archaic Greece one should view legal norms not simply as a monolithic creation of the State (however a 'state' is defined in the context of seventh- and sixth-century Greece) but as a complex social construct, the result of negotiation and compromise.

These conditions of lawmaking constitute a great departure from the picture that emerges from Homer, Hesiod and other early archaic sources. Through their active participation in the creation of the law of their communities, archaic Greeks must have realized that to a large extent control of the legal system (from the drafting of law to the control of the

courts) was commensurate with political power. How that realization was translated into further action in the political arena and in the courts was a different matter. In certain instances, such as in Sparta, Dreros and perhaps in Athens, the political and economic elite still retained much of their power, attested for early archaic Greece, to draft and interpret law. But the devolution of deliberative and legislative powers to wider sections of the population certainly undermined the traditional aristocratic prerogative to formulate social norms. The fact that at times a single enactment was endorsed by different social groups, or by only a subdivision of the citizenry, meant that to a certain extent it articulated the voices and concerns of the groups involved, just as the appointment of lawgivers often represented the climax of a process of social bargaining and compromise between different social groups with sometimes conflicting interests.

Furthermore, as the pool of potential participants in the lawmaking of a community widens, so do the nature and effect of law in the society in question. It goes without saying that even when acting as part of a wider group (e.g. the *dēmos* in a legislative assembly) every member of a political community will bring his own prejudices and understandings of the law, his own legal narratives, to bear when it comes to the point of dealing (formally or informally) with the legal system. The effect of this state of affairs on the legal systems of archaic Greek communities must have been considerable, especially because there is evidence to suggest that political institutions were much less formally defined than many scholars would assume. As Lin Foxhall has pointed out with regard to magistracies in archaic Greece, 'Power, in these circumstances, represents a discourse between the expectations and threshold of toleration of peers, on the one hand, and the resources (in all senses) and cunning of the incumbent'.[59] The evidence examined above suggests an analogous picture with regard to lawmaking[60] in parts of archaic Greece. Law embodied a plurality of, often discordant, legal discourses. This is because the drafting and formal enactment as well as the contents of archaic legal norms reflect the shifting and relative power hierarchies of the communities that generated them as well as the individual understandings of what law is and does of all the members of the community that in some way or another took part in the legislative process.

So by the middle of the seventh century people with a mindset similar to that encountered in Hesiod, i.e. critical of the tight grip on the legal system by the aristocracy in the early archaic period, had assumed a more formal role in the enactment of legislation, at least in some parts of Greece. From law as transcendent, divinely inspired and aristocratically controlled, an

untouchable set of norms that one had faithfully to abide by as it largely (and almost certainly idealistically) appears in Homer, we arrive at a notion of law enacted through developed processes of communal deliberation and thus understood more as a community concern than as the exclusive domain of a ruling class. Nevertheless, the increased participation of lower social orders and other social and tribal subdivisions of the population of a community in lawmaking procedures should not by any means be automatically equated with a movement towards a 'democratization' of law. Written law, even when endorsed by wide segments of the population, is not inherently democratic or oligarchic, and therefore its emergence does not necessarily lead to egalitarian forms of government.[61] Rather, I would argue that, at least in some parts of Greece, it was because more egalitarian forms of government were emerging[62] that the conditions (e.g. increasing popular participation in decision-making) that contributed to the emergence of written law were created. On other occasions, intra-elite struggle for control of political power and legal resources might account better for the emergence of written law.[63] But if written law and the processes whereby it was produced are not of necessity symptoms of a more egalitarian society, they certainly gave rise to a new and wider range of possibilities with regard to the usage of law in courts and everyday life. For if the social foundations of law are to change, then there needs to be an alteration not only in the means whereby law is enacted but also in the way written statutes are implemented in the courts. Starting in the seventh century, inscriptional and literary evidence does indeed suggest that such changes in the composition of the courts and the administration of justice were taking place in polities across archaic Greece. The following chapter is dedicated to documenting and analysing these changes.

IV

Law in the Courts

Since the early archaic period law-abiding Greeks placed their faith in the ideal of divine justice. Straight *Dikē*, it was believed, was ultimately guaranteed by Zeus and would always prevail. But in the often contentious environment of the archaic communities this ideal hardly corresponded with reality. As Hesiod saw it, *Dikē* was trampled on in the courts by the dishonesty of the political elite who were responsible for dispensing justice. Hesiod is also the first example of ideological resistance to the legal system dominated by the aristocracy, an attitude that, it has been argued in the previous chapter, must be related to the increased participation of the citizenry in the enactment of civic law as documented in the epigraphic record. At some point during the early archaic period many Greeks realized that an active involvement in the lawmaking procedures would go a long way in stemming the influence of the ruling political elite. Hence although we can safely argue that the traditional aristocracy continued to be greatly influential in the domain of law, already in the seventh century there is also a clear tendency in some parts of archaic Greece, detected in the sanctioning formulas of extant written laws, towards a shift of legislative power away from the elite. As a result different groups, defined along social, timocratic or tribal lines, contributed in some way or another to the formal enactment of law of their polities.

Once endorsed, written on stone and displayed in public, these written statutes became official manifestations of the state institutions and civic perceptions of justice. But how were these laws received and used by Greeks of the archaic period? Two issues are particularly important in this respect: literacy and the organization of the courts. The spread of writing in archaic Greece is a well-documented phenomenon, but to what extent was writing symbolic or perhaps the preserve of a restricted cycle of literate specialists (as it appears to have been in Bronze Age Greece and the Near Eastern empires)? With special reference to written law, was writing a functional, practical tool that facilitated access to the law or was it, due to

low literacy levels, a prohibitive barrier that made legislation appear distant and exclusive? These and other questions are raised in the following pages. In the present state of the evidence the answers must remain tentative, yet even so the issue of literacy and orality has important implications for our understanding of archaic law, including the thorny debate of the origins of written law. Our survey of the evidence suggests that laws were often written down for archival purposes, public display and for consultation in the courts, primarily by specialists (e.g. judges, court officials). Cross-references between written laws abound, and the documented attempts to amend existing laws betray the significance of keeping the written laws 'up-to-date'. With regard to literacy, the evidence suggests that literacy levels, at least in the epigraphically best-documented parts of archaic Greece, were pretty low, but not perhaps as low as some scholars have assumed.[1] Advanced literacy must have been a rare phenomenon but many if not most Greeks were capable of writing and reading simple texts. Nevertheless, I would argue that these factors alone had little impact on the operation of the legal system. In general, most archaic Greeks seem to have coped quite efficiently with the conditions and demands that an expanding legislative output and judiciary generated, partly because the traditional oral components of the legal systems appear to have remained quite strong, even several decades after the introduction of written law.

A concomitant issue is the use of archaic laws in court and the structure of these courts in general. The evidence examined in Chapter III suggests that many of the archaic written laws were the outcome of social compromise and articulated conflicting class interests. Yet law often has unexpected side-effects, especially in the way it is received in quotidian settings and used in the courts. In this process, the intentions and social background of the individuals who enacted a law might not always be relevant to the way this law is translated as justice in the courts, but the composition of the courts certainly is. It is therefore imperative to examine in greater detail the structure and function of judicial courts in communities across archaic Greece.

Dispute resolution in the courts was extremely crucial in determining how laws were received, interpreted and ultimately articulated social relations. In his discussion of the reforms of Solon, the author of the *Athēnaiōn Politeia* describes the right to appeal (*ephesis*) to a popular court as one of the most populist measures of the lawgiver. In a well-known passage he epigrammatically argues that when the people become the masters of the vote (i.e. as a jury) in the courts, they are masters of the state ([Arist.] *Ath.* 9.1: τρίτον δὲ μάλιστά φασιν ἰσχυκέναι τὸ πλῆθος, ἡ εἰς

τὸ δικαστήριον ἔφεσις: κύριος γὰρ ὢν ὁ δῆμος τῆς ψήφου, κύριος γίγνεται τῆς πολιτείας). The excerpt is fraught with problems of interpretation and anachronism has long been suspected.[2] Nevertheless, even if that is indeed the case, there must be little doubt that in the preceding passage the author articulates a fundamental principle of public life in the Greek world: that control of the judiciary can be easily translated into political power.

So was the right of the citizenry to enact law, detected in a number of archaic communities, accompanied by the equally important prerogative to administer justice in the courts? And how were the courts of archaic communities structured? How was law implemented? The evidence related to these questions is surveyed in the following pages. As with the issue of literacy, the implications are significant and far-ranging. Contrary to the elite-dominated courts of the Homeric age, the evidence from a number of polities suggests specialization and versatility as the two main characteristics of archaic courts. For the first time we have evidence for established popular courts in some parts of Greece. Their judicial powers appear to have been limited to appeals and the adjudication of specific crimes. Hence inevitably the heaviest burden of the administration of justice fell on the *dikastai* (judges). Even though it is clear that in some cases these *dikastai* were merely state magistrates performing a judicial role, it is also evident, especially from areas where the working of the legal system is better known, that experienced specialized judicial officials were also in place, quite possibly serving in a long-term or permanent capacity. The social origins of these *dikastai* remain largely unknown, although it is very possible that in many cases, like most state officials, they were members of the political and social elite. Other issues are also explored, such as the physical settings of the courts. As in early archaic Greece, administration of justice occurred mostly, if not entirely, in public and litigants and judges were subjected to the same pressures and influences detected in the Homeric epics and the poems of Hesiod. The courts were therefore a highly visible public arena of performance and competition, and constituted a feature of central importance in the life of the archaic Greek communities.

Literacy, orality and law in archaic Greece

Before tackling the issue of the reception and use of law in the courts and everyday life, one needs to address the question of the familiarity of average Greeks with the laws of their communities. The extent to which

archaic Greeks were acquainted with the contents of written statutes and legal processes had an obvious impact on the degree to which they were capable of engaging directly with the law of their community and coping with various legal challenges they might have encountered during the course of their lives.[3] Greeks were aware of the link between justice and the courts, on the one hand, and status, prestige and power, on the other. Success in court could often make the difference between poverty and prosperity or between prominence in public life and obscurity. This state of affairs was due to a number of factors, including the public character of legal proceedings and the small, oral and face-to-face nature of most Greek communities. Whatever the reasons, administration of justice in the courts was instrumental, and a good grasp of the letter of the law, as well as the ability to utilize skilfully such knowledge in the course of a trial, could give a litigant a great advantage over his legal adversaries.

The publication of laws in written format certainly helped make law's presence more apparent in the life of the community and contributed to the improved knowledge of particular laws by the citizens. It is a well-known fact that soon after the adoption of the Phoenician alphabet and its adaptation to Greek linguistic needs, Greeks began utilizing the new tool to record and publicly display laws and other civic documents (e.g. decrees) of their cities. But by the same token, even after the written word became a fairly widely used (at least in public life) mechanism of preservation and dissemination of information, a great number of Greek communities of the archaic and classical periods apparently (even allowing for the chances of archaeological preservation) perceived no advantage in committing their laws to writing. Yet such an absence of written legislation alone should not be taken as a sign of a less developed or less functional legal system.[4]

The most celebrated example of an archaic and classical Greek *polis* that largely lacked written legislation is Sparta.[5] There is indeed a strong possibility that even the so-called Lycurgan *rhētra*, a document of cardinal importance to the Spartans which will be discussed in more detail below, was not written down before the late archaic or even the classical period.[6] Besides this notoriously problematic document, there is a striking dearth of written legislation and written documentation in general from archaic and classical Sparta.[7] Some ancient authorities are keen to emphasize that the lack of written legislation was a policy consciously adopted by the Spartans themselves and originally introduced by Lycurgus (Plu. *Lyc*. 13.1-3; *Mor*. 227b). According to this tradition, the absence of written legislation was an integrative and stabilizing factor within the Spartan polity. 'Lawmaking was entirely entrusted to education' (πᾶν τῆς νομοθεσίας ἔργον εἰς τὴν

παιδείαν ἀνῆψε Plu. *Lyc*. 13.2), i.e. norms and values were inculcated in the Spartans from an early age during their long period of state-sponsored upbringing, thus producing a deeper and longer-lasting commitment to social norms (and therefore fewer attempts to transgress them) than written law could ever produce (cf. also Plu. *Mor*. 221b-c). The paradigmatic expression of the effect generated by this special relationship of the Spartans with the law, comes from a passage from Herodotus (7.104.4-5), already noted in Chapter I, in which the exiled Spartan king Demaratus did not hesitate to declare the Law as the only master of the Spartans.

But others saw this lack of written legislation as a systemic flaw of the Spartan polity. Thus Aristotle (*Pol*. 1270b28-31) was critical of the Spartan ephorate, a magistracy central in the political life of Sparta since the archaic period, because the ephors, he claims, 'reach important decisions' based on their personal judgment and not according to 'written laws'.[8] Aristotle's claim that Sparta lacked written laws is, as we have already pointed out, confirmed by the epigraphic record,[9] yet it does not of course mean that Aristotle and other authors believed that Sparta was a lawless polity. Aristotle himself frequently referred to specific Spartan laws (e.g. *Pol*. 1270a39-b1, law on procreation; 1271a37-42, law on admiralty; 1272a14-15, law on the organization of the *phiditia*), as did Herodotus, who referred to the νόμιμα established by Lycurgus (Hdt. 1.65) as well as to individual Spartan laws (e.g. the law (νόμος) forbidding the despatch of both Spartan kings on the same campaign; see Hdt. 5.75).[10] Other classical authors who discussed Spartan laws *en passant* include Thucydides (1.18.1), who claimed that the Spartans have had the same laws for over four centuries, and Xenophon (*Lac.* 8.1 on the spirit of obedience to the authorities and the laws among the Spartans and 8.4 on the power of the ephors to depose other magistrates who did not obey the laws; cf. also the detailed regulations described in *Lac.* 2, presumably introduced by the legendary lawgiver Lycurgus, on the upbringing and behaviour of boys), a personal friend of king Agesilaus and therefore an individual with unusual access and knowledge of Spartan society and institutions.[11]

All the above probably reveals more about classical Athenian perceptions of archaic and classical Sparta than about Spartan law itself. It is conceivable that Athenian authors who were to a great extent conditioned to associate law with a written text[12] were struggling to come to grips with a Spartan legal system that relied to a great extent on oral dissemination of information and unwritten social norms.[13] But as far as one can tell, the Spartans themselves did not consider their legal system dysfunctional

because it lacked written legislation. Moreover, there is enough evidence for legal procedure in classical Sparta to suggest that the administration of justice as well was not affected by the apparent absence of written law.[14] Socialization during the *agogē*, the public messes and other contexts largely account for the functionality and longevity of the largely oral Spartan legal system. For instance, we have already noted Plu. *Lyc*. 13, which emphasizes the link between upbringing and socialization, on the one hand, and the indoctrination of civic values and adherence to the law, on the other. Comparative evidence (discussed in later sections of the present chapter) suggests that the conditions of oral preservation and dissemination of law that this passage envisages are feasible. One obvious means of doing so was through daily interaction and conversation, especially in the context of the Spartan public messes.[15] Ancient commentators who were either well-acquainted with the conditions in Sparta or positively disposed towards the Spartan *politeia* (and thus more likely to reflect Spartan views, to the extent that these were known) present the public messes as an informal school for the education of Spartan youth in politics and other public matters. Hence Xenophon (*Lac.* 5.5-6) points out that Lycurgus encouraged males of all ages to attend the messes because 'the experience of the elders might contribute greatly to the education of the youth' and that the great deeds performed for the benefit of the state were the most common topic of conversation during those common dinners. A similar point is made in Plu. *Lyc*. 12 where it is claimed that the youth are educated in the *syssitia* when they listen to the political debates (λόγων πολιτικῶν) carried out during and after the meals.[16]

It must be noted that all these sources date from a later period that is beyond the scope of the present inquiry, but as far as one can tell there is nothing to suggest that Spartan public messes during the archaic period did not perform the same role of forging political identities and educating citizens in public matters, including matters of law. Similar techniques for the dissemination of information and the indoctrination of citizens in matters of law and social norms are attested in other parts of the Greek world as well as in some pre-industrial societies that remained primarily oral, even after writing had been adopted and widely employed for a number of purposes.

A good case in point is archaic Crete which provides an example of the proliferation of the use of writing in recording legislation soon after writing was first used for other purposes. Yet despite the public display of hundreds of public inscriptions, including laws, on the walls of temples or other prominent locations within Cretan cities, it is doubtful whether the average

citizen of these communities could read and comprehend in its totality and with ease the often highly technical parlance of archaic laws.[17] To give a specific example, could the average citizen of late archaic/early classical Gortyn read without assistance and utilize in court the provisions of the Great Code or other similar legal inscriptions dealing with highly technical issues such as family law and inheritance?

The length and complexity of archaic laws, especially those originating from Crete, have prompted James Whitley to argue that in the communities of archaic Crete the use of writing was limited to a small caste of specialized scribes and that as a result the recording of laws on stone had the purpose of making statutory legislation appear 'immutable and unchanging', hence performing the same function as legislation in monarchical Near Eastern empires.[18] As I have argued on another occasion, this thesis is untenable for a number of reasons.[19] Firstly, there is adequate evidence from archaic and early classical Crete to claim that ordinary Cretans were not completely illiterate but that they did possess at least some basic literacy skills.[20] The same assertion can also be made in connection with other communities of the archaic world. A case in point is Athens, where recently Merle Langdon has discovered a series of graffiti in the countryside of Attica, dating to the sixth century BC, which strongly suggest fairly extensive literacy skills among some shepherds.[21] To be sure, widespread functional literacy does not necessarily entail the ability of the majority of the population to comprehend and utilize extensive technical documents like a legal text, yet it disproves the point that writing was in archaic Crete and other parts of Greece the dark force that some scholars make it to be. Secondly, we know enough about Greek written law to ascertain that it had very little in common, on the perceptual and ideological level, with Near Eastern monumental law. Whereas the latter often served as a mouthpiece of the monarch's dominance, archaic Greek law was much more functional. The frequent and at times detailed cross-references (see Chapter III, nn. 41 and 42) to points of substantive law and procedural matters, detected in several archaic written laws, suggest that one of the purposes of such laws was their use as practical guides in the courts of justice. Moreover, as has been argued in the previous chapter, written law was often the outcome of social conflict and compromise and as a result it articulated a multitude of class interests and legal narratives. These and other characteristics greatly distinguish archaic Greek from Near Eastern law.

To return to the issue of literacy, additional evidence from parts of archaic Greece and ethnographic comparanda indicate that knowledge of

reading and writing was not a deciding factor either for making the members of primarily oral societies acquainted with law or for making the legal system of these societies acceptable and functional among their members.[22] In laws from Crete of the middle and late archaic period there is frequent mention of an official called *mnamon* who appears to have been an assistant to the judges, citing previous legal precedents and perhaps pronouncing the pertinent legal provisions during a lawsuit.[23] It is reasonable to assume that the existence of such officials predates the use of writing to record law and that in this early period these 'remembrancers' were, as their name suggests, living repositories of legal knowledge. If that is the case, then it is not surprising to see that after the introduction of writing these officials, in addition to maintaining their role with regard to the oral preservation and dissemination of law, also took over the ancillary task of recording these laws in writing. Hence the so-called Spensithios decree[24] (*Kadmos* 9 (1970), 118 = *SEG* 27.631 = *Nomima* I.22; see also our discussion of the document's sanctioning formula in Chapter III), a contract of the mid-sixth century outlining the obligations and privileges of the *mnamon* and scribe of a Cretan community, provides that Spensithios is to ποινικάζεν ('write down') and μναμονεῦϝεν ('remember') all the 'secular and sacred affairs' of the city. In return, this scribe and *mnamon* is to receive important privileges (an annual salary, immunity, status equal to that of the *kosmoi*). Spensithios obviously enjoyed high status within his community, perhaps a reflection of the importance of his craft.[25] *Mnamones* are also attested in other parts of the Greek world, for instance in a late archaic legal document from Halikarnassos (*GIBM* IV 886 = *Nomima* I.19 = *IGT* 84, Halikarnassos early to mid-fifth century) which details their responsibilities during the adjudication of cases regarding real estate property. Whatever the exact range of duties of the *mnamones* in these archaic communities, it is clear that their role was generally seen as upholding the law and justice through the oral and written word.[26]

According to the author of the *Athēnaiōn Politeia* in archaic Athens the *thesmothetai* had a function similar to the one generally assumed regarding the Cretan *mnamones*, i.e. to keep a record of all legal decisions, which was intended for use as a body of case-law in future litigation ([Arist.] *Ath.* 3.4: θεσμοθέται δὲ πολλοῖς ὕστερον ἔτεσιν ἠρέθησαν, ἤδη κατ᾽ ἐνιαυτὸν αἱρουμένων τὰς ἀρχάς, ὅπως ἀναγράψαντες τὰ θέσμια φυλάττωσι πρὸς τὴν τῶν ἀμφισβητούντων κρίσιν. 'The *thesmothetai* were elected many years later, when the elections to the offices were conducted annually, to perform the function of recording the ordinances and to preserve them for use in litigation').[27] But how did these officials

contribute to spreading knowledge of written law in their respective cities? The epigraphic record suggests that *mnamones* and other similar officials associated with the legal apparatus of a community were expected, if not at times required, to relate the contents of written law on specific occasions or on demand in the courts. Hence a late archaic law from Teos includes sanctions against those magistrates, including scribes (φοινικογραφέων), who do not read out 'to the best of their memory and power' (*Chiron*, 11 (1981), 8, d = *SEG* 31.985 = *Nomima* I.105.D, 14ff. = *IGT* 79 μὴ ὐναλέξεεν τα γεγραθμένα ἐν τῆι [σ]τήληι ἐπὶ μνήμηι καὶ δυνάμει) the contents of the law, with further imprecations against those who efface public inscriptions (cf. also the provisions against the destruction of the stele containing a decree, again from late archaic Teos ML 30 = *Nomima* I.104, 35ff. = *IGT* 78). Moreover, a second-century BC treaty (*IC* III III 4.40-7) between Hierapytna and Priansos in eastern Crete, although late, is revealing on how public documents like written laws could become accessible to semi-literate audiences. This treaty stipulates that every year ten days before the festival of the Hyperboia, jointly celebrated by both cities, the *kosmoi* of each *polis* are to make an announcement that the text of the treaty will be publicly read. Then on the specified date the text is to be read by the *kosmoi*. In case of negligence, the *kosmoi* of each city are to pay one hundred *staters* to the public treasury of the allied city.[28]

The evidence suggests that archaic Greek communities took the role of these officials charged with publicly pronouncing statutes and legal precedents very seriously. Clauses against negligent legal clerks were often included in the text of laws.[29] Other cities awarded great privileges to such officials, comparable to the ones reserved for the highest executive magistrates.[30] The severe punishments and high privileges bestowed on these officials are indicative of the great responsibility that they carried in the eyes of their communities: to make known to those with limited or no literacy skills the content of laws and other public documents of the *polis*. In the domain of law, the Cretan *mnamones* and other similar officials in other parts of the Greek world functioned as the intermediaries between the oral and written legal traditions. Their role was greatly respected, yet at the same time their performance was closely monitored.

It should also be noted that the task of publication and dissemination of community law was at times entrusted to an entire subsection of the citizenry. Hence a late archaic law from Himera in Sicily (late sixth/early fifth century, Brugnone 1997 and 1997-8, 579-87), dealing with the issue of land redistribution (γέες ἀναδαιθμο͂), prescribes that the *phratries* shall be responsible for publicizing the contents of written law (ll. 4-5 ηαὶ

φρατρίαι ἀ[ν]έδειξαν τὰ καταγεγραμένα).[31] How exactly the *phratries* went about performing that task is unclear – ἀ[ν]έδειξαν is particularly vague in that respect. The editor of the inscription and other commentators (e.g. L. Dubois in 'Bulletin Épigraphique', *REG* 112 (1999), 712) assume that the responsibility of the *phratries* was to make sure that the written law was properly published and displayed. An additional possibility, which fits well with the evidence from other parts of the Greek world (e.g. Crete, Sparta) regarding the dissemination of knowledge of public matters, including laws, concerning the community through practices of commensality and song,[32] is that in addition to ensuring the proper publication of written statutes the *phratries* of Himera also assumed the responsibility of spreading the word, during *phratry* gatherings, communal meals and other occasions, regarding the new and important laws of the community. Overall the law from Himera highlights the possibilities of increased awareness and ultimately dissemination of the contents of written law that existed in the communities of archaic Greece.

Besides the role of the *phratries* in Himera and the existence of public officials in other cities who could recite, presumably on request, the provisions of a particular law or public document, citizens of small-scale communities like those of archaic Greece could have familiarized themselves with the statutes and legal system of their city in a variety of other ways. Increased awareness of legal norms and procedures was facilitated by the fact that law and the administration of justice was to a large extent a public affair. Written laws were usually publicly displayed, thus giving the opportunity to consult them, individually or with the help of a *mnamon*, when the need arose. Furthermore, as we have already discussed in Chapter II, even the earliest sources on archaic law, i.e. Homer and Hesiod, suggest that adjudication took place in public and was open not only to the litigants and other interested parties but also to any other member of the community.[33] The same pattern of the administration of justice in public does emerge from the extant epigraphic material as well, a point that will receive further consideration in subsequent sections of this chapter.

Moreover, it should be emphasized that acquaintance with the legal system could be obtained even in other everyday contexts that at first glance had no relation whatsoever with the law. We have already noted how the common messes of the *homoioi* in Sparta performed a pivotal role in the dissemination of knowledge of issues of public interest. Similarly, different forms of commensal activities popular in many parts of the Greek world such as the artistocratic *symposia*[34] and the Cretan *andreia* (men's

clubs where communal messes occurred),[35] in addition to their value as settings of entertainment and sociability, could also promote awareness of legal and political issues.[36] These were meetings of subsections or even of the entire adult citizenry of a community, sometimes subsidized by the state itself, during which common dining, drinking, entertainment and discussion took place. Ancient sources indicate that the topics of conversation in such settings often comprised public affairs in general, including politics and law. For example, the common messes in Cretan *andreia* (an institution more similar to the Spartan communal *syssitia* than the Athenian upper class *symposia*) seemingly performed a major role in the diffusion of community news in the Cretan *poleis*. Dosiadas, an early Hellenistic historian,[37] in describing the workings of the *andreion* of Lyktos provides us with an eloquent testimony to this aspect of life in a Cretan city. He reports, among other things, that ἀπὸ δὲ τοῦ δείπνου πρῶτον μὲν εἰώθασι βουλεύεσθαι περὶ τῶν κοινῶν, εἶτα μετὰ ταῦτα μέμνηνται τῶν κατὰ πόλεμον πράξεων καὶ τούς γενομένους ἄνδρας ἀγαθοὺς ἐπαινοῦσι, προτρεπόμενοι τοὺς νεωτέρους εἰς ἀνδραγαθίαν (*FGrH* 458 F 2) ('After dinner they are in the habit first of deliberating on public affairs; after that subject they proceed to call up deeds of prowess in war and to praise the men of proven bravery, in order to encourage the younger ones in the pursuit of virtue'). One should expect that at times the laws of the city were among the 'public affairs' informally discussed in the common meals of the *andreion*.[38]

Hence the *andreia* and other similar communal institutions were informal but important forums where information concerning issues of public interest was scrutinized and disseminated, social differentiations were crystallized and duly exploited by the powerful and wealthy and political alliances and allegiances were formed and strengthened. In such contexts law and politics became part of community knowledge. Comparative ethnographic evidence demonstrates further how occasions like the meetings of the *andreia* and other informal settings could be instrumental in the spreading of news, even of matters related to law and the administration of justice. A case in point are the African Swazi whose perceptions and practices of law present some striking similarities with archaic Greece. Hilda Kuper, an anthropologist who studied this group extensively, described their judicial system thus: 'Disputes between unrelated people are discussed in the first instance by the family councils of the litigants; if they cannot reach a settlement, the complainant reports to his chief, who sends him with a representative to the chief of the defendant and the case is tried *in public* ... Knowledge of tribal law and court

procedure is part of the normal experiences of most Swazi men, who are expected to attend discussions held in the yard homestead, and *to "talk cases" with friends and acquaintances*'[39] (emphasis added). Another example are the Ndendeuli of south Tanzania: 'Matters of public interest and concern, including disputes, are discussed whenever men come together in any number. A gathering of neighbors may be primarily for some other purpose – a beer-drink, a feast, the performance of rituals, and the like – or it may be an arranged and rather more formal assembly convened for a specific discussion'.[40] In other words, in such small communities it is at times difficult to clearly distinguish private from public. Discussion of legal norms, procedures and stories of dispute settlement blend in with everyday small talk, commensality and other practices. Overall, anthropological and comparative studies of law in small, pre-industrial and primarily oral societies amply demonstrate that such societies can have functional legal systems that are well-understood and respected by community members, even by those able to make little or no use of writing.[41] The evidence from parts of archaic Greece (e.g. Crete and Sparta) fits this model well.

Besides occasions of commensality like the *andreia* and *syssitia*, in archaic Greece knowledge of law, politics and other public issues could have spread through simple conversation and gossip, undoubtedly very effective means of dissemination of community news in small oral societies. The evidence from classical Athens is particularly strong regarding this issue,[42] and since Athens was the most populous city-state in the history of ancient Greece, one might expect that gossip and conversation must also have been very pivotal and effective in spreading knowledge of public matters in polities with much smaller populations during the archaic period. The combined effect of all the factors discussed above, i.e. the small and close-knit nature of archaic communities, the open display of written law, the existence of specialized magistrates responsible for relating statutes and precedents in legal settings and, last but not least, the existence of formal and informal mechanisms of social interaction and dissemination of information regarding issues of public concern, must have contributed to the high visibility of law and the administration of justice in the archaic communities.

All in all, the evidence examined above indicates that the citizens of many archaic communities were more familiar with the laws and the legal system of their cities than the presumed relatively low level of literacy rates would seem to suggest. In a number of archaic cities special clerks were often employed whose main job was to recite written laws on demand and

help in the conduct of formal litigation, thus reducing the need for litigants or other citizens to read for themselves the provisions of written laws. Moreover, conversation among friends and neighbours and participation in communal activities such as the *andreia* where public matters, including law, were discussed could also compensate partly for the lack of reading skills. All these factors contributed to creating an image of law as open to interpretation and revision, a perception that co-existed with the ideal of law as magisterial and divinely inspired, instances of which were examined in previous chapters. The implications of this inference will be further examined below. For the time being we must turn to the examination of another crucial aspect of the matter in hand, i.e. adjudication and the courts in the archaic world.

The judicial powers of civic officials

Our examination of the evidence so far has revealed partial glimpses into the structure of archaic courts and the processes of adjudication. Early archaic poetry, more extensively examined as evidence for law in Chapter II, suggests that legal disputes were ordinarily settled by boards of *gerontes* or *basileis*, 'elders' and 'kings', i.e. individuals who have been identified with the ruling elite of the early archaic communities and who were prominent in many other aspects of life besides law, including politics and war. Archaic written laws provide further information and elucidate the composition and workings of courts of justice in a number of Greek communities. Starting in the seventh century BC, a prominent feature of the administration of justice in several archaic cities is the concentration of judicial and executive powers in the hands of the same individual – in reality, an evolution of the principle detected in connection with the more autocratic Homeric and Hesiodic *basileis* and *gerontes*. A well-known example is provided by the earliest enactment from seventh-century BC Dreros (*BCH* 61 (1937), 334 = *Nomima* I.81 = *IGT* 90), examined in more detail in the previous chapter. The decree in question envisages the possibility that an ex-*kosmos* might attempt to break the ten-year ban on the iteration of tenure for the highest executive magistracy. In such a contingency, it is specified that that individual would owe double the amount of the penalty imposed during all legal cases that he adjudicates (αἰ δὲ κοσμησίε, ὀ[π]ε δικακσίε | ἀϝτὸν ὀπῆλεν | διπλεῖ). In other words, the decree explicitly acknowledges that adjudication was one of the most important, if not the most important, duty of a Drerian *kosmos*.

The fact that, at least in some parts of Crete, the *kosmoi* could exercise judicial responsibilities is also confirmed by an early fifth-century law from Eltynia (*IC* I X 2.8 = *Nomima* II.80 = *IGT* 94) which provides that, very possibly in a trial concerning bodily assault, the *kosmos* shall judge after swearing an oath (κόσμος γ[ι]γνόσκεν ὀμνύντας). One might add that recently a reference to the ϙόσμος ὸ ἐπιστάς in an early sixth century law from Gortyn (*IC* IV 14.g-p.1 = *Nomima* I.82 = *IGT* 121) has been interpreted by Paula Perlman as possibly referring to the *kosmos* acting in a judicial capacity.[43] In light of the evidence outlined above, which demonstrates that at times the *kosmoi* in at least two other Cretan cities (Dreros, Eltynia) did exercise some judicial powers,[44] such an inference with regard to the ϙόσμος ὸ ἐπιστάς in Gortyn is not unlikely, however it cannot be safely deduced from this particular fragmentary law.[45]

Evidence from other parts of Greece also indicates that various executive magistrates exercised judicial responsibilities. Describing the constitution of Athens[46] before Draco, the *Athēnaiōn Politeia* maintains that the nine archons had the right to decide cases on their own authority and that their jurisdiction was not limited to adjudication of preliminary enquiries, as was the case in the fourth century BC ([Arist.] *Ath.* 3.5: κύριοι δ᾽ ἦσαν καὶ τὰς δίκας αὐτολεῖς κρίνειν, καὶ οὐχ ὥσπερ νῦν προανακρίνειν).[47] Evidence suggests that Athenian archons continued to exercise some judicial powers until the end of the archaic period. Demosthenes refers to a law of Solon[48] which indicates that the archons exercised some judicial responsibilities during the sixth century, although their powers were probably diminished compared to the pre-Solonian era, partly due to the creation of the *Heliaia* (D. 23.28: εἰσφέρειν δ᾽ ἐς τοὺς ἄρχοντας, ὧν ἕκαστοι δικασταί εἰσι, τῷ βουλομένῳ· τὴν δ᾽ ἡλιαίαν διαγιγνώσκειν ‘the archons, according to their jurisdictions, shall bring lawsuits in court for anyone who so wishes; and the court of Heliaia shall adjudicate’;[49] for the *Heliaia* see further below). Moreover, a *lex sacra* concerning the Acropolis, traditionally dated to 485/4 BC (*IG* I^3 4 = *Nomima* I.96), provides partial confirmation of the judicial role of the archons in late archaic Athens. The first almost complete clause (A.6-7) stipulates that legal cases related to some regulations recorded in the previous non-extant part of the inscription are to be presented to three *archontes* in the *agora* (π[ρὸς] τὸς τρε̃[ς ἄρχοντας τὸς] ἐν ἀγορᾶι).[50]

In addition to the evidence regarding the judicial responsibilities of the archaic Athenian archons, the late fifth-century BC inscription containing a copy of Draco’s law on homicide from about 620 BC (*IG* I³ 104 = *Nomima* I.02 = *IGT* 11) reveals some further details regarding the process

of adjudication of homicide trials and the judicial powers of executive magistrates, especially their powers in the adjudication of homicide.[51] Michael Gagarin (1986, 87) translates the opening clause of the law as follows: 'Even if a man unintentionally kills another, he is exiled. The kings are to adjudge responsible for the homicide either the killer (restoring ἐργασάμενον) or the planner; and the *ephetai* are to judge the case' (11-13: καὶ ἐὰμ μὲ ᾽κ [π]ρονοί[α]ς [κ]τ[ένει τίς τινα, φεύγ]ε[ν· δικάζεν δὲ τὸς βασιλέας αἴτι̣ο[ν] φόν̣[ο] Ε……..17……Ε [β]ολ|εύσαντα· τὸς δὲ ἐφέτας διαγν[ο͂]ν̣[α]ι̣.). The number of the *ephetai*, according to another section of the same law, was fifty-one (17; 24-5). But the overall interpretation of the law is beset with numerous problems. For instance, the exact nature and functions of the *basileis* and the *ephetai* at this point in Athenian history are uncertain. Moreover, the exact procedure alluded to in the opening passage has been the subject of scholarly controversy for many decades, and consensus is far from being achieved.[52] To make things even more complicated, the division of jurisdiction for homicide cases among the Areopagus (on which see further below) and other courts mentioned in ancient sources[53] might also date, at least in part, to the archaic period. How all these features of the Athenian judicial system fitted into a coherent whole during the archaic period, if they ever did, is open to speculation. [Arist.] *Ath.* 57.4 suggests that in the fourth century the βασιλεύς (a relatively minor official by that time) initiated the legal proceedings for homicide except in those cases judged by the Areopagus. Even though this description does not necessarily contradict the fragmentary opening of Draco's law, one cannot assume that this was the standard procedure for prosecuting homicide in Athens during the entire archaic period. With particular reference to Draco's law, the *basileis* were certainly not the community chieftains that we encounter in Homer and, perhaps with their power reduced, in Hesiod.[54] Given the high importance of tribal institutions implied in the law, the suggestion that the *basileis* in question are to be identified with the tribal *phylobasileis* is plausible.[55] The nature and composition of the board of fifty-one *ephetai* are even more obscure. However, it is evident from Draco's law that they were the ones to bear the brunt of adjudication in homicide cases. Despite these difficulties and regardless of the exact details, for our purposes it is sufficient to emphasize the two-stage procedure of adjudication, outlined in the opening clause of Draco's law, that involved two different boards of state officials as well as the possible involvement of other courts and boards of magistrates in the adjudication of homicide trials.

The fact that executive magistrates and other civic officials often assumed judicial responsibilities is confirmed by archaic laws from other parts of Greece as well. The sixth-century law from Chios (ML 8 = *Nomima* I.62 = *IGT* 61) reveals that an official called *dēmarkhos* (literally 'leader of the people') had the right to pronounce legal judgments (B, ἢν δὲ ἀδικῆται παρὰ | δημάρχωι).[56] An inscription discovered in Mycenae (*IG* IV 493 = *Nomima* I.101 = *IGT* 24) and dating to the late sixth century, provides that in the case of absence of the *damiorgoi* (perhaps in a period of political crisis?) the *hieromnamones* in charge of (the shrine?) of Perseus will serve as judges in cases concerning the parents (or of the parents; αἰ μὲ δαμοργία εἴε, τὸς ἰαρομνάμονας τὸς ἐς Περσε͂ | το‹ῖ›σι γονεῦσι κριτε͂ρας ἔμεν κα‹τ›ὰ ϝεϝρεμένα). This clause comes at the end of the inscription, and, even though the context is unknown, it clearly indicates a hierarchy of judicial authority and flexibility on the part of city officials in dispensing justice. Further examples concerning the judicial powers of civic magistrates and other officials include an early to mid-fifth-century law from Naupactos in western Lokris which stipulates that in case of any violation of the law the magistrate (*arkhos*) will have thirty days to render justice (*IG* IX 1^2 3.718.38-45 = *Nomima* I.43) and a mid-fifth-century decree from Erythrai (*IvEr* 2 = *Nomima* I.106 = *IGT* 75; see more on this document below) which provides that the local *prytaneis* had in certain cases the responsibility of overseeing the initial phases of legal proceedings (A, 27-31 ἐσάγεν δὲ τ[ά]ς δίκας καὶ συγγρά[φεν] πρυτάνεας, καὶ [γράφε]σθαι τὸν ὀφ[έλοντα]). Finally, a law from late archaic Gortyn (*IC* IV 42.B = *Nomima* II.5 = *IGT* 129*, end of sixth century) reveals that the official called *mnamon* (for whom, see more above) at times exercised judicial authority. This law stipulates that the judicial oath of the *mnamon* taken in conjunction with the oath of a judge shall always decide a case (5-6: ὀρκιότερον ἤμην τὸν δικαστὰν καὶ τὸμ μνάμονα).[57] Perhaps in this instance a *mnamon* exercised joint judicial authority with a judge by confirming by oath relevant written legal provisions or legal precedents.

All these diverse examples suggest that, even though the role and degree of participation of these officials in the process of administration of justice varied from community to community, very often in archaic Greek *poleis* executive and judicial powers went hand in hand.[58] Some archaic enactments (e.g. from Dreros and Chios) clearly suggest that executive officials exercised their judicial authority independently. Yet in other instances (e.g. concerning the *basileis* in relation to homicide trials in archaic Athens) it is plausible that the role of state officials might have been limited to initiating the litigation process. In such cases, the

responsibility for administering justice was often reserved for other magistrates with judicial powers or even specialized judges.

Δικασταὶ and other judicial authorities in archaic Greece

Epigraphic and literary evidence from the late archaic period refers to specialist judges (δικασταὶ) as being responsible (independently or alongside executive magistrates, see above) for the administration of justice in a number of Greek communities.[59] The exact reasons and the process whereby specialized boards of judges were established remain unknown. The separation of executive and judicial powers (if it was ever completely accomplished) that is implied in the creation of a distinct body of judges can perhaps be partially explained by the demographic and institutional expansion of the early archaic *poleis* which necessitated the devolution of some judicial responsibilities from the chieftains and executive magistrates of the early archaic period to a more specialized group of legal officials, including judges. Moreover, local factors certainly dictated the extent and nature of these developments. The establishment of regional and possibly itinerant judges in the Attic countryside (εἰς τὴν χώραν) by Peisistratus as suggested by sources of the classical period illustrates this pattern well. In sixth-century Athens, as the population grew and social relationships became more complex, additional legal challenges certainly arose. The establishment of these local judges might have been both the result of the growth of the Athenian *polis* during the period in question, in addition to being a response to particular conditions in the Attic countryside and a populist measure introduced by a tyrant keen to reduce civic strife and consolidate his rule.[60] Be that as it may, with reference to the archaic Greek world at large the establishment of a judiciary as a separate institutional entity was certainly a significant development towards the management of legal resources of the archaic Greek communities.

We will return to the question of the reasons behind the emergence of a distinct judiciary in late archaic Greece at the end of this segment, but for the time being the evidence for archaic *dikastai* should be more thoroughly examined. Whatever their origins, by the sixth century judges became a standard feature of dispute settlement in the courts of justice in a number of communities across Greece. Their role in administering justice was taken very seriously and often laws include specific instructions for the judges' conduct and manner of adjudication.[61] Furthermore, extant laws and other evidence suggest that often steps were taken against negligent judges, the implication being of course that at times the performance of these judges

left something to be desired. We have already encountered (Chapter III, section on the lawgivers) the passage from Ephorus (*FGrHist* 70 F 139), according to which the seventh-century lawgiver Zaleucus from Epizephyrian Locri attempted to restrict the powers of arbitrary interpretation of the law by the judges by specifying precise penalties for certain offences. Furthermore, a fragmentary inscription of the early/mid-fifth century found at Olympia (*IvO* 25), possibly originating from Chalkis, illustrates this point well. It contains a prescription for a board of nine judges (l. 7 δικασταὶ δ' ἔστων ἐννέα) and a mandate to adjudicate within five months (l. 10 δικάσαι ἐν πέντε μ[ησίν]). Then, as today, delays in the courts could be significant, and the judges were partly to be blamed for them. Besides the accountability of judges, this document also illustrates other important features of the judiciary in this part of late archaic Greece. Regardless of the exact context, it is very unlikely that this particular board of judges was created with the unique objective of trying offences related to the contents of this law alone or that the judges involved did not carry out any other duties besides what was prescribed by *IvO* 25. It is far more reasonable to assume that nine serving judges were assigned to this particular board and that they adjudicated other cases, alone or in groups, before and after the trials in question. If true, all the above suggests a well-established, flexible and diversified judiciary.

Other archaic laws confirm this inference. It would appear that in several *poleis* the employment of full-time δικασταὶ was so effective that further specialization within their ranks soon became desirable and necessary. Some judges must have became very proficient in some aspects of the law, hence leaving open the possibility that they were appointed for the long term and perhaps even on a permanent basis, and not for a fixed-term tenure as was the case for most executive magistrates. Examples of further specialization within the ranks of the judiciary include a sixth-century law from Gortyn (*IC* IV 42.B), which concerns itself with the responsibilities and eventual negligence of judges. This document reveals the existence of a specialized judge of the *hetaireiai* (11-12 τοῖ δὲ τᾶν ἑταιρειᾶν δικασστᾶι) and a judge responsible for deciding cases related to sureties (12-13 ὅς κα τῶν ἐνεκύρον δικάδηι). The Gortyn Law Code, a document of the first half of the fifth century, which almost certainly incorporates material from the late archaic period, also refers, in addition to the δικασταὶ, to specialized judges dealing with matters pertaining to orphans (ὀρπανοδικασταί, *IC* IV 72.XII.6 and 11-12).[62] The late archaic decree granting the right of *asylia* from Khaleion (Galaxidi) in Lokris (*IG* IX 1^2 3.717 = *Nomima* I.53; for this document, see further below) refers to

specialist judges for cases involving non-citizens (B.10 ξενοδίκαι); and, as we have already seen (this chapter, n. 45), it has been suggested that the trials involving non-citizens (κσενείαι δίκαι) attested in Gortyn (*IC* IV 80 = *Nomima* I.7) were conducted by the κσένιος κόσμος.[63] Furthermore, the Gortyn Law Code also stipulates that legal cases should be adjudicated by one of these specialist judges as circumstances dictated (e.g. col. VI.29-31, relevant to material property: μολὲν ὄπε κ' ἐπιβάλλει, πὰρ τοῖ δικαστâι ϝεκάστο ἔγρατται. See also IX.23-4). This passing reference to the δικαστâι ϝεκάστο ἔγρατται suggests that these judges with competence in particular aspects of the law were a regular component of the judiciary of this Cretan city.

Besides the specialist *dikastai*, other socially powerful individuals, perhaps at times invested with official authority, could render justice as part of an arbitration. Arbitration as a means to settle disputes existed since at least the early archaic period (see Chapter II). As the Menelaus v. Antilochus dispute[64] described by Homer reveals, the success of arbitration was closely connected to the authority and the influence of both the litigants and the arbitrator(s). Archaic written laws also acknowledge, albeit sparingly, the existence of arbitration, presumably as an alternative and less cumbersome procedure to settle certain contentious matters. Hence a law of the mid-sixth century from Gortyn (*IC* IV 21.2 = *Nomima* II.38 = *IGT* 123) includes a reference to a μέζα̣τ̣[ος], which has been understood by some commentators as denoting the arbiter.[65] Another law from the same Cretan city, almost contemporary with the famous Law Code (*IC* IV 82 = *Nomima* II.8 = *IGT* 156) provides further confirmation of the existence of legal arbitration as well as details of the procedures adopted during its course.[66] All these laws suggest that, at least in Gortyn, procedures of mediation that largely survived, one might reasonably assume, from the early archaic period were gradually, if only partially, incorporated into and regulated by enacted civic law. To be sure, extant written laws provide only sparse indications about the existence of such procedures, undoubtedly because arbitration as described in early archaic literary sources has to a certain extent been superseded by the workings of standing civic courts of specialist *dikastai* and/or popular juries. Moreover, as it has been argued in connection with early archaic Greece, it is fair to assume that a great deal of arbitration and dispute settlement was conducted on a more informal level (i.e. without the involvement of civic officials and courts), and, technically speaking, many such cases fell outside the scope of the legal system as envisaged by written law. But the written laws' relative silence should not be a reason to assume that private and informal arbitration did not exist, or

that it was unpopular. On the contrary, we must acknowledge as very feasible the possibility that, similarly to the practice in later Greek communities,[67] and irrespective of the existence of written law, prospective litigants frequently resolved their differences without recourse to the courts[68] or sought the mediation of influential individuals (e.g. local political and religious leaders) or even of family and acquaintances, all of whom operated outside the formal confines of the local legal system, in order to settle their disputes.[69] In this sense, we have to regard formal courts as only one site among many in a network of adjudication in the archaic communities and count the private and informal arbitrators among the individuals with judiciary authority in archaic Greece. Ultimately, the extent to which disputes were settled by standing courts, informal arbitration or other means no doubt depended on the conditions of each case and the social status of the litigants.

Finally, special mention should be made of the Athenian Areopagus, an ancestral body with political and judicial powers which, in the case of archaic Athens, perhaps provides the missing link between the early courts of the community chieftains[70] and the state-sponsored standing courts of justice of the late archaic period. Composed by prominent members of the Athenian aristocracy, the Areopagus appears to have enjoyed high esteem among most Athenians during the archaic and classical periods, even though its exact role within the Athenian constitution was not always so clearly defined.[71] The evidence for the Areopagus is primarily late but the literary tradition is consistent in emphasizing the judicial role of this board of ex-archons during the archaic period. The *Athēnaiōn Politeia* describes the Areopagus as the protector of the laws in archaic Athens both before and after the legislation of Draco (621/620) (3.6, before Draco: ἡ δὲ τῶν ᾽Αεροπαγιτῶν βουλὴ τὴν μὲν τάξιν εἶχε τοῦ διατηρεῖν τοὺς νόμους; 4.4, after Draco ἡ δὲ βουλὴ ἡ ἐξ᾽ ᾽Αρείου πάγου φύλαξ ἦν τῶν νόμων καὶ διετήρει τὰς ἀρχάς, ὅπως κατὰ τοὺς νόμους ἄρχωσιν; 8.4, after Solon: τὴν δὲ τῶν ᾽Αρεοπαγιτῶν ἔταξε ἐπὶ τὸ νομοφυλακεῖν, ὥσπερ ὑπῆρχεν καὶ πρότερον ἐπίσκοπος οὖσα τῆς πολιτείας).[72] According to the same source, the Areopagus was responsible for prosecuting those responsible for the highest offences (3.6 διώκει δὲ τὰ πλεῖστα καὶ τὰ μέγιστα τῶν ἐν τῇ πόλει), including judging cases of homicide (a responsibility that it almost certainly assumed some time after Draco's legislation; see 16.8 καί ποτε προσκληθεὶς [Peisistratos] φόνου δίκην εἰς ῞Αρειον πάγον) and serving as a hearing board for grievances (4.4 ἐξῆν δὲ τῷ ἀδικουμένῳ πρὸς τὴν τῶν ᾽Αρεοπαγιτῶν βουλὴν εἰσαγγέλειν, ἀποφαίνοντι παρ᾽ ὃν ἀδικεῖται νόμον).[73] How much of this power the

Areopagus enjoyed during the archaic period is disputed, although many commentators agree that besides its vaguely defined role as the 'Guardian of the Laws and the Constitution', the Areopagus acted as a court for intentional homicide and some other matters, at least from the time of Solon onwards. The long-preserved judicial powers of the Areopagus guaranteed that the Athenian aristocracy would constantly have a share in the interpretation of law and administration of justice long after the devolution of judicial authority to executive magistrates and professional judges.

How exactly did all these judges and arbitrators administer justice? The references to judges in archaic laws from various parts of Greece (see examples above) both in the singular and plural, clearly suggest that judges in archaic Greece meted out justice both individually and in groups, presumably according to the complexity and importance of the case. Moreover, written laws suggest that judges were deciding cases based primarily on legal precedents, the testimony and oaths of witnesses as well as their own understanding of the letter of the law and their sense of justice. In this work they were aided by several auxiliary officials like the *mnemones*, i.e. officials charged with recording and/or memorizing legal decisions and probably proclaiming legal precedents. However there must have been instances where even the most learned and wise judge encountered an impasse, e.g. cases where the letter of the law did not account for the circumstances of a particular dispute and/or no germane legal precedents upon which a case could be decided existed, or cases where the testimonies of witnesses were conflicting or deficient. In similar instances the law code of Gortyn provides that Gortynian judges were required to decide on their own oath, i.e. in accordance with the facts of the case and in the best interest of justice.[74]

One question remains largely unanswered: why were specialized judges established in the first place? At the beginning of this section I argued that demographic reasons and the growth of the body of substantive law might account for the trend. But the attribution of the introduction of boards of *dikastai* in a number of archaic communities largely to population growth provides only a partial explanation and fails to appreciate the full complexity of the legal system in these communities. It is apparent from the extant evidence examined above that in some Greek *poleis* magistrates and other individuals of high public profile continued to exercise judicial responsibilities until the end of the archaic age, perhaps alongside the *dikastai*. In fact, it is not unlikely that many archaic Greeks might have had trouble distinguishing between executive magistrates and judges if, as

seems possible, in many cases a *dikastēs* was originally a state executive magistrate who acted occasionally as a judge. Hence even though many references to *dikastai* without a doubt refer to specialist and institutionally independent legal experts whose job was to preside over lawsuits and deliver verdicts, it is not unlikely that many of these judges might have been public figures in their own right who had exercised other forms of civic power at some point or other during their careers. Regardless of the various possibilities, it is very reasonable to assume that, given the social and economic conditions prevalent in many parts of Greece, archaic *dikastai*, similarly to other civic magistrates, were drawn primarily from the aristocracy. If this hypothesis is correct, and archaic judges were indeed largely an extension of the aristocracy, then the late archaic judiciary must have been a very crucial element in the mosaic of law, social differentiation and conflict that clearly emerges from many extant written laws and other archaic sources.[75] We have already dissected the evidence provided by Hesiod in that respect, and we will have more to say on the role of the judges in the following chapter.

On a related note, scholars have by and large assumed that the emergence of written law limited the powers of the judges.[76] This is a misconception arising from the fact that a solid independent judiciary is assumed throughout the archaic period. However, as we have seen, specialized judges were widely employed in archaic communities only towards the end of the period in question, hence, on the present state of the evidence, at least several decades after the earliest written laws appeared. To a certain extent, the *dikastai* assumed judicial powers previously held by executive magistrates and, given the rather erratic conditions of recording statutory legislation and legal precedents, their authority should have commanded considerable leverage in the courts, especially when they had to decide without reference to written laws or judicial precedents. So the emergence of written law appears to be only peripherally relevant to the development of a specialized group of legal experts employed as judges, and certainly there is no obvious reason to assume that written laws restricted their powers to any considerable extent.

Instead, the development of a specialized judiciary could be seen as a response to the emergence of written law and especially of the social struggles that accompanied its enactment. Chapter III revealed the extent to which written law was at times the outcome of social compromise or conflict with several social and kinship groups within the *poleis* staking a claim to the drafting, enactment and revision of the laws of their community. In this context of conflicting legal narratives, the control of the

judiciary was as vital as was the control of lawmaking procedures. Law in archaic Greece became more accessible to wider segments of the population, not because the commitment of statutory norms to writing in some way 'democratized' law, but because more Greeks participated, in a meaningful way, in the legal system. Against these conditions, the emergence of a professional judiciary, consisting primarily of members of the political elite, could represent an attempt on the part of the aristocracy to canonize legal knowledge and therefore better control current interpretations of the law in the courts.

Popular courts in archaic Greece

By the end of the archaic period in a number of Greek communities a cast of professional judges had taken over many judicial powers previously exercised by executive magistrates. Judging alone or in groups, the *dikastai* were the most recognizable face of justice in the courts across archaic Greece. But judicial courts, like statutory law, are also sites of social contestation. Evidence from the middle and late archaic periods reveals that the aristocracy, through the *dikastai* and bodies like the Areopagus, did not remain alone in exercising judicial power in archaic Greece. Written laws frequently allude to entire subdivisions of the population, sometimes even the entire *dēmos*, acting as courts of justice or rendering decisions with legal consequences. The partial devolution of judicial powers to the people, along with the appropriation of the power to enact law, are undoubtedly two turning-points of momentous historical significance, but, like other historical developments of the archaic period, they are only scantily documented. The reforms of Solon are very possibly an example of such transfer of judicial powers to ordinary Athenians, something that the author of the *Athēnaiōn Politeia* explains as the direct outcome of social crisis and the pressure exercised by the lower social orders ([Arist.] *Ath.* 7.3, 9.1 and below). This is certainly a plausible scenario, and it might indeed partly account for the increasing judicial powers of the *dēmos* in Athens during the early sixth century BC. In any event, and regardless of the exact process whereby the judicial responsibilities of the citizenry were enhanced, it is clear that by the late archaic period in several polities across the Greek world the aristocratic monopoly on justice had been broken.

Perhaps the earliest piece of evidence for the administration of justice by a wider social group is to be found in the late seventh/early sixth-century set of ordinances from Tiryns (*AEph* (1975), 105-203, blocs 1-4, face A = *Nomima* I.78 = *IGT* 31). Blocs 1-4 of these laws is a section that refers to

fines and other penalties for unknown offences imposed on various officials. This segment follows the pattern of a description of the multiple layers of accountability of civic magistrates that is very familiar from archaic laws across the Greek world (on this point, see further Chapter V), and it ends with a reference to a decision of the people (*damos*) in the popular assembly (ἡόπυι κα δοκεῖ τοῖ δάμοι ἀλιαίαν). This clause strongly alludes to the power of the popular assembly to deliberate and perhaps endorse legislation[77] and/or adjudicate. Moreover, bloc 7,2 of this same set of inscriptions from Tiryns provides that in a matter of unpaid fines (not necessarily for the same offence as blocs 1-4) ultimately the *epignomon* shall refer the matter to the 'crowd' (τον ὀχλον). Modern commentators are usually perplexed to find a reference to a pejorative term like ὄχλος in the text of an ordinance, but the possibility should be considered that in this context the term did not have derogatory connotations and that, similarly to other instances,[78] it is used in the inscription from Tiryns as a synonym of 'the people'.[79] Overall these fragments, although at times vague and inconclusive, indicate that the popular assembly at Tiryns possessed some deliberative and perhaps judicial powers and that in certain instances the *damos* had the ultimate authority to render decisions on public matters.

A more solid piece of evidence with regard to the existence of popular courts is to be found in a reference to a people's court in the early/mid-sixth-century law from Chios (ML 8 = *Nomima* I.62 = *IGT* 61) discussed above in relation to the lawmaking powers of the *dēmos* of Chios (δήμο | ῥήτρας) and the judicial powers of the *dēmarkhos*. Section C (ll. 2-3 and 5-6) of this law refers to a 'people's council' (βολὴν τὴν δημοσίην), a body which consisted of fifty men from each tribe, i.e. a cross-section of the citizenry. The extant parts of the law make clear that the βολὴ δημοσίη had judicial powers, although opinion is divided on the exact nature of these powers. Hence some commentators believe that this body stood as an independent court and judged appeals[80] (ll. 1-3: ἐκκαλέσθω ἐς | βολὴν τὴν δημοσίην· ll. 9-14:τὰ τ᾽ ἄλ[λα] πρησσέτω τὰ δήμο καὶ δίκα[ς ὁ ϙό]σαι ἂν ἔκκλητοι γένων̣[ται]), quite possibly including cases previously tried by the *dēmarkhos*; while others[81] maintain that the council's role was probouleutic, i.e. to prepare the cases for the popular assembly which was the main court of appeal. A third possibility might involve a combination of *probouleusis* (political and judicial) and adjudication on the part of the βολὴ δημοσίη (another way to interpret C.9-13 τὰ τ᾽ ἄλ[λα] πρησσέτω τὰ δήμο καὶ δίκα[ς ὁ ϙό]σαι ἂν ἔκκλητοι γένων̣[ται]). Whatever the exact powers of the Chian *bolē*, the law makes clear that citizens in archaic Chios were actively involved, through the βολὴ δημοσίη and possibly the

popular assembly (A.7: -- εν δήμο κεκλημένο; the fragment is inconclusive), in the administration of justice in their community.[82] With reference to the βολὴ δημοσίη it is worth noting that a fragment of Hipponax (128 West), a poet who spent his life in Ephesus and Clazomenae during the second half of the sixth century, refers to a death decreed by the βουλῆι δημοσίηι (2-4: ὅπως ψηφῖδι < > κακὸν οἶτον ὀλεῖται βουλῆι δημοσίηι παρὰ θῖν᾽ ἁλὸς ἀτρυγέτοιο), very likely a reference to a body similar to the one attested in Chios.[83]

According to the *Athēnaiōn Politeia*, Chios was not alone in the introduction of a procedure of judicial appeals heard by a popular court. Roughly contemporaneous with the Chian law in the early sixth century, Solon introduced the right of *ephesis* (appeal) to the popular court of *Heliaia* ([Arist.] *Ath.* 9.1; Plu. *Sol.* 18.2-3).[84] In the description of the four timocratic classes[85] the author of the *Athēnaiōn Politeia* maintains that Solon assigned to the *thētes*, the lowest of the four classes, the right to participate in the assembly and the courts (7.3: τοῖς δὲ τὸ θητικὸν τελοῦσιν ἐκκλησίας καὶ δικαστηρίων μετέδωκε μόνον), implying of course that all other classes above them could also be part of the same institutions.[86] Moreover, as we have already seen at the beginning of this chapter, in [Arist.] *Ath.* 9.1 the same author identifies, one suspects largely from hindsight, the right to introduce an *ephesis* as a particularly populist measure on behalf of Solon and claims that by opening participation of the courts to the masses Solon gave control of the state to the *dēmos* (κύριος γὰρ ὢν ὁ δῆμος τῆς ψήφου, κύριος γίγνεται τῆς πολιτείας).[87] Whatever the intentions of Solon might have been, evidence from other parts of the Greek world further corroborate the trend detected in Chios, Athens and perhaps Tiryns, whereby the claim of the traditional aristocracy to be the only interpreter and enforcer of a divinely inspired law was losing its grip in the midst of local social upheavals and reforms of the legal system. More specifically, several extant laws, in addition to the ones examined already, indicate that the right of the people to reach decisions with legal implications (in a court, council or the popular assembly) was introduced in a number of archaic cities as an alternative or alongside the traditional courts presided over by boards of judges/magistrates.

According to the epigraphic record, the judicial powers of the people seem to proliferate especially during the late archaic period. The late sixth-century law from Elis *IvO* 7.2-3 (= *Nomima* I.109 = *IGT* 42), discussed in Chapter III in connection with the law amendment procedures, contains a provision with regard to a judicial decision that goes against the letter of the law (αἰ δέ τις πὰρ τὸ γράφος δικάδοι, ἀτελές κ᾽ εἶε ἃ δίκα· ἃ δέ κα

ϝράτρα ά δαμοσία τελεία εἴε δικαδόσα). The exact context of this clause cannot be deduced with certainty, but many commentators agree[88] that this is a measure against negligent judges and in favour of the establishment of an acceptable legal precedent by the people. In other words, If a judge or magistrate acting as judge gives a verdict that is in contradiction to an extant written law, the verdict would be considered annulled for purposes of enforcement or in case of an appeal. If, on the other hand, as the law explicitly stipulates a decision going against the contents of a law is endorsed by the people, then the verdict would be considered valid legal precedent, all previous relevant laws would be superseded and all future cases conforming to such circumstances will be judged on the basis of the latest popular decision on the matter.

Other late archaic laws are equally revealing regarding the judicial powers of the *dēmos* and the composition of juries in some Greek communities during the period in question. An early fifth-century BC law from Teos (*Chiron* 11 (1981), 1-30 = *Nomima* I.105 = *IGT* 79) includes an oath, sworn probably by civic magistrates, according to which it will not be possible to prosecute, arrest, execute or confiscate anyone's property without the consent of two hundred or more at Teos and following the regulations of an existing law; and that in Abdera (a community that constituted part of the civic territory of Teos), the consent of five hundred will be required.[89] The references to the two hundred in Teos and the five hundred at Abdera probably refer to quorums necessary for reaching a decision with legal connotations in a popular assembly. Furthermore, if the assumption that the oath was sworn by civic magistrates is correct, the preceding document also articulates the principle detected in the laws from Chios and Elis discussed above, and also alluded to in some of the evidence regarding the Solonian *Heliaia*, that the judicial power of popular assemblies and/or councils usually did override that of the various magistrates who were entrusted with adjudication and the enforcement of legal decisions.

In many of the examples discussed above, it is often difficult to establish with certainty whether the evidence refers to the popular assembly reaching decisions of a judicial character (e.g. probably the case in Elis and Teos) or whether a judicial session of the popular assembly (or of a representative section of the citizenry) acting as a court is envisaged (e.g. the Athenian *Heliaia* and possibly the Chian *bōlē dēmosiē*). As is to be expected, the epigraphic record reveals further local differentiations. A case in point is a late archaic decree granting the right of *asylia* from Khaleion (Galaxidi) in Lokris (*IG* IX 1^2 3.717 = *Nomima* I.53), which suggests that often various

qualifications and restrictions applied to the selection of juries. The decree, which bestows the mutual right of *asylia* to the citizens of Khaleion and Oiantheia when visiting or residing in the other community, also stipulates the exact procedure whereby juries shall be selected in the case of a lawsuit, relevant to the provisions of this decree, taking place at Khaleion.[90] Hence in the case of a citizen of Oiantheia being involved in litigation at Khaleion, the litigant himself is to choose the members of the jury 'according to merit' (B, 12 ἀριστίνδαν), to the exclusion of the *proxenos* and the litigant's private host. It is further specified that such a jury will consist of fifteen members in cases that involved at least one *mna* or more and of nine members in cases of less than one *mna*.[91] Moreover, in cases of two Khaleians engaged in litigation against each other according to the provisions of this decree (very possibly when one of the Khaleians in question is acting in court on behalf of an Oiantheian), then the *damiorgoi* (executive magistrates) are to select the members of the jury also 'according to merit' (B, 14 ἀριστίνδαν) after taking the appropriate oaths.[92]

Although it cannot be considered typical, the document is remarkable for revealing the mechanics behind jury selection in a Greek city of the late archaic period. In this instance, a lot depends on the meaning of ἀριστίνδαν: is the selection of jurors according to merit, as I have chosen to translate it, or does the provision in fact impose a social restriction, and therefore we should translate ἀριστίνδαν as 'from among the best', i.e. that the jurors could be selected only from within the ranks of the aristocracy? This is a likely interpretation, but on the current state of the evidence the issue (as far as the decree from Khaleion is concerned) is better left open. Plutarch (*Sol.* 12) provides a parallel for archaic Athens when he records that Megacles and his associates in the Cylonian affair were tried at a court of three hundred jurors selected ἀριστίνδην, and given the historical context of the passage (i.e. before the establishment of the *Heliaia* by Solon), we can be certain that by ἀριστίνδην Plutarch referred to the traditional nobility.[93] In terms of the procedure for jury selection, one can also compare the provisions included in a mid-fifth-century decree from Erythrai, usually interpreted as an attempt to curb the influence of powerful individuals and thereby protect the city's democratic regime (*IvEr* 2 = *Nomima* I.106 = *IGT* 75). There it is prescribed that in a lawsuit related to the provisions of the law, the matter is to be decided by a jury of twenty-seven citizens (nine from each tribe, assuming that there were three tribes: A, 13-16: δικάζεν δὲ ἀπὸ τῶμ φυλέων ἄνδρας ἐννέα ἀπ᾽ ἑκάστης) whose property is at least thirty staters.[94] Moreover, the law stipulates that this jury is to be designated by at least sixty-one individuals (A, 22-5

πληρῶν δὲ τὸ δικαστήριον μὴ ἐλ̣ά̣[σ]σονας ἢ ἑξήκο[ντ]α̣ κ̣α̣ὶ ἕνα), quite probably a reference to the majority quorum in the *bolē* of Erythrai, which at that time consisted of one hundred and twenty members (*IG* I^3 14.9 = *IvEr* 4). In other words, it was quite plausibly the city's *bolē* that was entrusted with the selection of the jury members in this instance. The documents from Khaleion and Erythrai suggest a rather ad hoc approach regarding the selection of juries, as opposed to the standing constitutional bodies with judicial powers in Athens (*Heliaia*) and possibly Chios (*bōlē dēmosiē*). Is that because in both the Khaleion and Erythrai enactments extraordinary circumstances (litigation involving foreign citizens/legal action against those who threaten the constitution) are envisaged? Or can we assume the same flexibility in the selection of the juries entrusted with the adjudication of more routine matters?

No definitive answer to these questions can be attained in the present state of the evidence. We must be content with a rather generic assertion that, similarly to the issue of lawmaking, local conditions largely determined the judicial powers of officials as well as the composition of the court juries. With regard to the active popular participation in courts of justice, the overview of the evidence points to the conclusion that large-scale standing popular juries, very possibly involving the entire body or at least a significant proportion of adult male citizens, were regularly operating during the sixth century in some parts of archaic Greece (see Athens, Chios above). Yet by the same token it also appears that in special circumstances some archaic cities resorted to the creation of smaller juries, selected according to a number of criteria, which suggest that the proportional representation of the citizenry was not always a primary concern (Khaleion, Erythrai). This of course does not preclude the possibility that there were other standing popular courts in Khaleion and Erythrai or in a number of other archaic polities. What appears incontrovertible, on the other hand, is the fact that when we get to the beginning of the sixth century BC in a number of Greek cities the right to mete out justice, similarly to the right to enact law, was not restricted to a closed caste of judges/political leaders (as appears to have been the case in early archaic Greece), but was rather appropriated by wider portions of the citizenry, at times even by the entire *dēmos*. In practice this right to administer justice by parts of or the entire *dēmos* was, at least for the archaic cities for which evidence survives, institutionally enshrined in a variety of shapes and forms that clearly suggest a compromise and balance of judicial power among various social forces and not a complete control of late archaic courts by the people. Hence often we hear of popular juries

acting as courts of appeal or being composed of only a representative fraction of the population and functioning as integral parts of legal systems that also allocated significant judicial powers to state magistrates (e.g. *dēmarkhos* in Chios). But whatever the potential hitches, the reality of multifaceted judicial authorities, involving the *dēmos* and various state representatives, in the legal systems of the communities in question is inescapable.

The logistics of adjudication

Last but not least, the question of the organization of trials and the physical setting of late archaic courts of justice should also be addressed. As we have seen in Chapter II, both Homer and Hesiod suggest that administration of justice took place in public in the *agora* and that attendance at lawsuits was open to all interested citizens.[95] Is this picture of archaic courts in agreement or at odds with the evidence provided by the extant written laws? Inscriptional evidence suggests that in some archaic cities legal proceedings often commenced by a public declaration in a city's assembly. Such declarations were an expedient way to initiate the legal process and appear to have had the validity of sworn testimony. *IC* IV 80 (= *Nomima* I.7), a decree of the early fifth century dealing with legal matters arising in the relationship between Gortyn and its dependent community Rhittenia, is the best illustration of how such declarations worked. It specifies that if any Rhittenians had any further legal grievances (i.e. in addition to the ones stipulated in the previous segment of the decree), then a herald from Gortyn will present himself on the tenth day and invite all interested parties to come forward and argue their case in a plenary assembly (ll. 12-15: ὅτι δέ [κα αὖ]τ[ι]ς ἀνπιπαίσοντι τὸ κοινὸν οἰ Ϝιττέννιοι πορτὶ τὸνς Γορτυνίον[ς --*ca 6*--]ν̣ τὸν κάρυκα Ϝιττενάδε ἐν ταῖδ (δ)έ|κα παρέμεν ἒ αὐτὸνς ἒ ἄλλονς π[ρ]ὸ̣ [τούτον ἀπ]οκρίνεθθαι κατ᾽ ἀγορὰν ϝευμέν|αν τᾶς α[ἰ]τίας ἃς κ᾽ αἰτι[ά]σ[ονται, τὰν δ]ὲ̣ κρίσιν ἔ̆[με]ν ἃ̣ιπερ ταῖς ἀ̣[---).[96] Such a procedure raised public awareness of existing disputes and litigations and helped litigants mobilize their network of relatives, friends and supporters that was so critical in an adjudication system that was open to the public. Once grievances and disputes reached the adjudication stage, all evidence suggests that judicial proceedings were also taking place in public.[97] An early fragment of a law from Gortyn, dating to the end of the seventh century BC (*IC* IV 13.g-i.1-2 = *Nomima* I.1 = *IGT* 120) refers to a lawsuit (ϝαστίαν δίκαν) taking place in the *agora* (--[λ]άϙοι ϝαστίαν δίκαν [ἐν τᾶι ἀγ]ορᾶι καὶ ἀ δίκα).[98] Similar references to

judicial proceedings in the *agora* occur in laws from other parts of archaic Greece. Draco's homicide law, a sixth-century law from Phaistos in Crete and laws from late archaic Gortyn, including the famous Gortyn Law Code, all include references to legal proceedings occurring in the *agora*.[99]

It is worth emphasizing that there are no indications throughout archaic Greece of the existence of professional legal representation or assistance (of the kind provided e.g. by the forensic speech writers in classical Athens) with the handling of a case. Litigants and other interested parties were often responsible themselves for initiating legal proceedings, on their behalf or on behalf of others (a right introduced in early sixth-century Athens, according to classical and later sources, by Solon; see [Arist.] *Ath*. 9.1; Plu. *Sol*. 18.6. Cf. D. 24.105).[100] Similar conditions are epigraphically attested or strongly implied for other parts of archaic and early classical Greece, e.g. *IC* IV 42.B.4-5 (= *Nomima* II.5 = *IGT* 129*), Gortyn c. end of sixth/early fifth century, ὸ ἄρκον τᾶς δίκας; *IC* IV 72.XI.51 (= *Nomima* II.16 = *IGT* 166), Gortyn, early/mid-fifth century, ὸ ἄρκον τᾶδ δίκας; *IvEr* 2 (= *Nomima* I.106 = *IGT* 75), Erythrai, mid-fifth century A.5-6 δίωξιν δ' ἔναι τῶ βολομένωι. Moreover, litigants had to procure their own witnesses and construct their arguments in the presentation of their case. Providing testimony in court was another common means for ordinary citizens of archaic communities to engage with the law, and there is indeed ample evidence for the role and responsibilities of court witnesses, especially in archaic and early classical laws from Gortyn.[101]

Once witnesses appeared in court, often they were called upon to swear an oath. Their testimony, especially in disputes surrounded by controversy and uncertainty, was crucial in determining the outcome of the trial. Already in the seventh century Hesiod recognized the importance of witnesses in determining the outcome of disputes, when he advocated to 'Get a witness. For trust and mistrust alike ruin men' (μάρτυρα θέσθαι. πίστεις γάρ τοι ὁμῶς καὶ ἀπιστίαι ὤλεσαν ἄνδρας, *Op*. 371-2). In the Homeric *Hymn to Hermes*, during the arbitration proceedings of the dispute between Hermes and Apollo, the former is quick to emphasize that Apollo was not accompanied by any witnesses (μάρτυρας) or observers (κατόπτας) at the point of his unannounced entry into Hermes' home during the search for the missing cattle (372), implying that by failing to produce formal witnesses (i.e. witnesses summoned to attest a procedural or contractual act, who will then be capable to testify in court about this act) Hermes was violating procedural rules.[102] Finally, the importance of witnesses' testimony is suggested by a procedural rule reportedly introduced by Solon (Ruschenbusch 1966, F 42; further discussed in the

following chapter), according to which it was demanded from the each litigant 'to swear an oath when he did not have a contract or a witness' (κελεύει γὰρ Σόλων τὸν ἐγκαλούμενον, ἐπειδὰν μήτε συμβόλαια ἔχῃ μήτε μάρτυρας, ὀμνύναι καὶ τὸν εὐθύναντα δὲ ὁμοίως). There can be little doubt that litigants must have made every effort to ensure that their witnesses and supporters came to court in big numbers and threw their weight behind their case.[103]

Finally, mention should also be made of the casual and interested bystanders who must have constituted a regular feature of adjudication in the courts of justice of various communities across archaic Greece. In a manner similar to the crowds attending the trial depicted on the shield of Achilles, very often the support generated by these spectators in favour of one of the litigants must have functioned as a barometer of public opinion which could have tilted the outcome of many trials. All in all, the openness and public nature of legal proceedings must have had a great effect in the small communities of archaic Greece. Trials conducted in the *agoras* of archaic communities across Greece were public spectacles of the first rank.

Conclusion

Similarly to the issue of lawmaking, examined in the previous chapter, the evidence for the structure of the courts and the administration of justice in archaic Greece is limited and comes from very few cities, primarily from Athens and Gortyn. As a result, any conclusions must be tentative and provisional yet, by the same token, it should be pointed out that despite local peculiarities, some basic features of adjudication are quite consistently documented (or at least not explicitly contradicted) in the scarce evidence from other parts of the archaic world. What all this evidence seems to suggest is that, starting in the mid-late seventh century, judicial power had been largely transferred from the small groups of *gerontes* and *basileis* of the Homeric and Hesiodic era to civic officials, standing courts of justice (including courts consisting of popular juries) and professional *dikastai*. The exact reasons for this development are unknown, but they were certainly complex and were perhaps related to the demographic and institutional expansion of the Greek *poleis* during the period in question, as well as to the social and political turmoil that is explicitly documented for parts of the Greek world and can be, with some confidence, deduced for others.

But once these changes were in place, what effect did they have on the way law was received in the courts and in the communities at large? The

extant evidence suggests that archaic Greeks were constantly bombarded with opportunities to interact with the law, as litigants or witnesses in a lawsuit, as interested observers of the legal proceedings in the *agora* or as casual interlocutors of legal matters with friends and family. Law and justice were hence constant features of everyday life in archaic Greece. This inference is directly related to the opening theme of this chapter, i.e. the extent to which archaic Greeks, even if they were semi-literate or if their *polis* lacked written law, could nevertheless function effectively within a well-structured legal system. The evidence examined above overwhelmingly suggests that in principle, and quite possibly in practice, they could. Moreover, the same evidence also indicates that even relatively low literacy skills (e.g. as attested for some polities in Crete) or lack of written law (e.g. Sparta) should not have prevented the citizens of these archaic communities from taking an active interest in and engaging closely with the law and the administration of justice of their communities.

In such an environment citizens of archaic communities must soon have realized ways to cope successfully with the demands of statutory law and court procedures in order to advance their interests. The fact that legal procedures in many cities were often quite flexible, in terms of the possibilities it provided to litigants for settling their disputes, certainly contributed to that. Hence, besides submitting disputes to the formal judgment of a judge, an authorized official, or a jury, there was also the possibility that interested parties could settle their dispute privately and entirely without recourse to the formal legal apparatus, in a kind of informal arbitration. Such an alternative must have been very common in the ancient world, just as it is today.[104] All in all, the emerging picture is that for many archaic Greeks, justice could have been achieved and negotiated on many different levels, often outside the strict confines of state courts.

The existence of extra-legal alternatives does not mean of course that the importance of the courts was diminished. On the contrary, evidence suggests that Greeks saw their courts of justice as critical in achieving their objectives and maintaining social stability. Thus, in a number of archaic Greek cities there is strong evidence that standing courts of justice were consolidated during the sixth century, to the extent that at times specialization among the court officials and judges occurred (e.g. in Gortyn, see discussion above). Popular participation in juries is also attested for the first time in some archaic communities during the same period, with Athens and possibly Chios the most prominent examples.

As a result of this constant interaction between citizens and legal systems, one can reasonably expect that many Greeks developed a wide range of perceptions of how law should be interpreted in the courts and applied in everyday life. In fact, comparative evidence suggests that even people with a minimal or occasional engagement with the legal system can develop novel strategies to work with or even around the law when the opportunity arises. At times, it is not unusual for the same person to display contradictory beliefs towards the law, as the case of Hesiod in Chapter II demonstrates. Similarly, it is not unusual to find cases where an individual will accept the legal norms of his/her community and actively participate in the legal system while at the same time attempting in practice to sidestep or even bend these rules in order to gain a financial or social advantage. It will be argued in the following chapter that the structure and operation of the courts of justice in various Greek communities, as suggested by the evidence, were conducive to many archaic Greeks manipulating the law and the justice system. In order to appreciate better the implications of this assertion for archaic Greece, one needs personal stories of individuals who were actively engaged with the legal system of their community and espoused or encountered such behaviours. As is to be expected, written laws, concerned primarily with substantive norms, procedures and possible cases of infringement could never provide anything approximating that. Fortunately, some sixth-century literary sources, notably Solon and Theognis, provide first-hand evidence for the reception and manipulation of law in the courts and everyday life in parts of archaic Greece. What follows is an analysis of such individualized accounts of perceived malpractices in the legal system and their wider impact on archaic Greek communities.

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V

Law in Everyday Life

The preceding chapters have examined in detail the evidence for the enactment of law as well as the administration of justice in archaic Greece. In the cities for which evidence is available, law emerges as a polyvalent category, a social construct whose meaning was at times ferociously contested in the deliberative assemblies and the courts across archaic Greece. But what of the life of the law beyond the formal structures of the courts and lawmaking institutions? How was law perceived, received and employed by lay Greeks during the archaic period? These questions constitute the main theme of this chapter, and in order to address them, we have to reconnect our narrative with Chapter II and the examination of law and justice in the poetry of Hesiod. The Boeotian poet constitutes the first instance of an account of a personal experience with the law, but he is certainly not the last. Since the time he composed his poetry, fundamental changes occurred in the legal systems of many archaic communities. In these communities law ceased to be an aristocratic monopoly, a bequeathed orthodoxy or an absolute truth. While the aristocracy retained much of its control of lawmaking and the judiciary, there is evidence that a few decades after Hesiod lay Greeks, in places as diverse as Dreros, Athens and Chios, could actively challenge the aristocratic dominance of law and participate widely in the workings of the legal system. In addition to these fundamental changes in the legal systems of these city-states, other social and political developments, and especially the conditions of social strife that are well documented for many regions of archaic Greece as well as the legislative reforms of the lawgivers, often highlighted the connection between law and power and added another dimension to the social life of the law. Hence, besides being conducive to the propagation of elitist normative ideals (Homer) and the advancement of personal interests (Hesiod), during the middle and late archaic period law could also articulate and mediate social conflict and therefore become the catalyst for further change. Yet within this big picture there should be little doubt that individual Greeks continued

to struggle with the legal realities of their day and strove to achieve success in court.

Before we proceed any further, I need to draw attention, in lieu of an introduction to the discussion that follows, to a critical aspect of the interaction between law and the everyday life: the fact that very often there exists a discrepancy between the normative intentions and understanding of social conditions embodied in legislation, and the reception, assessment and use of the same legislation in the courts and quotidian settings, where it is often observed that the letter of an existing law does not always provide for the contingencies of a particular case or the complexities of social life. In other words, the everyday is not simply a domain of passive reception of the laws and other pronouncements of state authorities. Quite often it is also a site of social praxis, renegotiation, resistance and ultimately re-enactment of social norms and ideologies. In the words of two eminent critical legal theorists, 'Law does not just happen *to* the everyday; it is produced and reproduced *in* everyday encounters' (original emphasis).[1] As law attempts to define social reality, its reception in everyday life results in the law itself being redefined in a way that is in keeping with the understandings and strategies of lay legal actors but very often in contradiction to the original intentions of lawmaking authorities.

With particular reference to the archaic world, the act of committing civic statutes to writing made law's claim to shape social reality more pressing and authoritative. However, the increased involvement of kinship groups and social classes outside the aristocracy in the formal endorsement of law, in some Greek cities at least, must have compromised in the eyes of many Greeks the law's magisterial position and made it more susceptible to various class interests. Moreover, conditions in the courts and other everyday settings, as depicted in legal inscriptions and the personal stories of individuals who had close encounters with the law of their city, reveals that law was often flexible in its application and that it was reconstituted, and at times even undermined and resisted, in order to suit the needs of a particular case and the personal interests of each litigant. It is therefore argued that the evidence suggests that the increasing involvement in the production of law and litigation by a wider portion of the citizenry went hand in hand with a qualitative shift in popular perceptions of the nature of law as well as with the adoption, on the part of lay citizens, of more interactive and dynamic ways of dealing with the legal systems of their communities. This assertion is not a universal formula with which to understand the reception of law in archaic Greece, but it nevertheless organically combines the extant epigraphic evidence from several archaic

cities as well as the relevant literary sources in an interpretation that is meaningful in the context of wider historical developments during the period in question.

Against the law

The poetry of Hesiod as evidence for perceptions and practices of law in a small Boeotian community in the early seventh century has been extensively discussed in Chapter II. Following Hesiod, the most important sources that reveal aspects of the interaction between law and the quotidian are, in chronological order, the poetry of the Athenian lawgiver Solon and the elegies of Theognis. Both authors provide personal narratives that illuminate the interaction between the individual and the law as well as the reception of law in everyday life in two cities (Athens, Megara[2]) in sixth-century Greece. There is no doubt that both sets of poems present their own problems of interpretation but they are very valuable in that, contrary to Hesiod, they portray an era when law has ceased to be the exclusive prerogative of a small elite and has largely become a field of social contention. In particular, they reveal how law could have been at the heart of social conflict (Solon) or how it could have been actively manipulated and resisted as the need arose (Theognis). It is worth therefore examining in more detail the content of these poems with regard to the law, before analysing their social implications towards the end of the chapter.

The circumstances of social and ideological strife that led to the appointment of Solon as archon and lawgiver of Athens in 594/3 BC have already been discussed in Chapter III. In this section we are more concerned with the evidence his elegies provide for the reception of law in the courts and everyday life. Similarly to other archaic sources, Solon identified economic inequalities and abuses of law and justice as the main causes of the social crisis that befell Athens on the eve of his reforms. In elegy 4 the brunt of Solon's criticism is borne by the 'people's leaders, whose mind is unjust' (δήμου θ' ἡγεμόνων ἄδικος νόος, fr. 4.7). Their disregard for justice (Δίκη, fr. 4.14; κακοφραδής, referring probably to crooked judicial verdicts, fr. 36.21) combined with their greed (κλέπτουσιν, fr. 4.13) and crooked judgments (δίκας σκολιάς, fr. 4.36) led Athens to self-destruction. Solon was of course not the first Greek to voice similar concerns: Hesiod in the early seventh century had also regretted what he perceived as abuse of judicial power by the ruling class.[3] The issue of judicial abuse and corruption[4] appears to have been endemic, at least in some parts archaic Greece.[5] The fact that Solon lingers so

extensively on the theme of abuse of law and justice, especially by the aristocracy, indicates that this issue was a major grievance on the part of the lower social orders and that under the circumstances this was a matter that Solon could not afford to ignore. As a result, Solon did not merely articulate these concerns in his poetry but also attempted to rectify them with his reforms.

For Solon, there are two ways to rectify an *adikia*. Following a common archaic literary *topos*, Solon perceived *Dikē* as a force that transcends human strife and, enforced by the gods, always triumphs (fr. 4.15-16; 13.7-8; 13.29-31). The unjust leaders might destroy Athens but their deeds will not remain without retribution. But in addition to the expectation of divine vengeance, Solon also openly exhorts his fellow citizens to embrace *Eunomiē* in everyday life: 'this is what my heart bids me to teach the Athenians, that Lawlessness (Δυσνομίη) brings the city numerous plights but Lawfulness (Εὐνομίη) reveals all that is orderly and appropriate and often places fetters round the unjust' (fr. 4.30-3). Solon claims to have assisted in this process by means of his legislation: 'I introduced *thesmous*[6] for the lower and the upper classes alike providing a straight legal process for each person' (θεσμοὺς δ' ὁμοίως τῷ κακῷ τε κἀγαθῷ εὐθεῖαν εἰς ἕκαστον ἁρμόσας δίκην ἔγραψα, fr. 36.18-20). These quotations encapsulate the most significant matters that were at stake regarding law and the administration of justice in early sixth-century Athens. The right to produce and interpret law was perceived as one of the principal issues of contention in a conflict conducted along class lines. At the same time, the judicial system was seen by many Athenians as a site of social disaffection and contestation while the judicial procedures and verdicts were perceived as controversial and iniquitous.

Almost contemporary with the poetry of Solon and depicting an equally polemical social environment, the elegies of Theognis[7] expound similar themes related to the abuse of law and justice in a late archaic *polis* marred by class conflict.[8] Theognis' corpus has generated over the years considerable scholarly disagreement related to the authorship, composition and historicity of the elegies transmitted under the name of the Megarian[9] poet.[10] In general I concur with the view that although the original Theognis composed sometime in the late archaic period,[11] the corpus in its present state bears clear signs of re-elaboration in later centuries. Most likely the *Theognidea* include poems not necessarily composed by a single poet, but rather poems that depict the same ideological disposition and which were composed in a process of 'cumulative synthesis of Megarian poetic traditions'[12] during a period of one and a half centuries (i.e. late

seventh to early fifth centuries BC) and then, similarly to other archaic poetry, performed and probably expanded in other parts of the Greek-speaking world.[13] Hence Theognis can be considered not merely a parochial source for sixth-century Megara but rather an elegiac corpus of wider appeal across Greece that articulates the concerns, values and ideals of social elites during the sixth and early fifth centuries BC. In that sense, and because of its panhellenizing character, the *Theognidea* can be a valuable source for late archaic and early classical Greek legal history, providing details of individual experiences and interpretations of the law which many aristocrats in late archaic Greece could relate to.[14] Overall, taken in conjunction, Solon, Theognis and epigraphic evidence can provide a more comprehensive picture of the reception and exploitation of law in the courts and everyday life of some Greek communities during the sixth century BC.

In a nutshell, the *Theognidea* voice the anxieties of disgruntled aristocrats in the fast-changing world of late archaic Greece.[15] The high-class origins and aspirations of the poet are evident throughout the corpus. A rather simplistic binary division of society into 'noble' (ἐσθλοί, ἀγαθοί) and 'base' (δειλοί, κακοί) is a universal theme that constitutes the backbone of Theognis' ideology and philosophy of life.[16] What is particularly repugnant for Theognis and his aristocratic peers is the collapse of traditional élite symbols and the reversal of status distinctions in the *polis*. As Theognis succinctly puts it, 'those who were formerly noble are now base, and those who were base before are now noble' (οἱ πρόσθ᾽ ἀγαθοὶ νῦν αὖ κακοὶ, οἱ δὲ κακοὶ πρὶν νῦν ἀγαθοί, Thgn. 1109-10; cf. also 679). In other passages it is pointed out that leaders (ἡγεμόνες), who by virtue of their position should be considered as part of the 'noble', have fallen into the depths of depravity (εἰς κακότητα πεσεῖν), thus behaving like the 'base' (Thgn. 39-42; 1081-2b); the 'base' who used to wear goatskins, true rustics who lived outside the city like deer ignorant of the distinctive marks of their class or of nobility (Thgn. 53-60), now yield unfair judgments (δίκας) for the sake of their own profit and power (οἰκείων κερδέων εἵνεκα καὶ κράτεος, 44-6).[17] Moreover, besides simply bearing the outer signs of nobility, the 'base' have actually achieved a position within the city that allows them to wield real power. In a well-known metaphor of the state as a ship Theognis maintains that the base have taken over (Thgn. 675-6: 'they have overthrown the good helmsman' κυβερνήτην μὲν ἔπαυσαν ἐσθλόν; Thgn. 679: 'the porters rule and they are above the nobles' φορτηγοὶ δ᾽ ἄρχουσι, κακοὶ δ᾽ ἀγαθῶν καθύπερθεν) and desperately warns the noble to fight back before it is too

late (Thgn. 680: 'I'm afraid that perhaps a wave will swallow the ship' δειμαίνω, μή πως ναῦν κατὰ κῦμα πίῃ).[18]

An important aspect of the social malaise endemic in his community is, according to Theognis, the manipulation of perceptions of justice and legal procedures by the *kakoi*. Law and the administration of justice are presented by Theognis as both an ethical and practical concern for the late archaic aristocracy. Time-honoured aristocratic ideals of *dikē* are overthrown by a new discourse of justice championed by the emerging *dēmos*. Furthermore the *kakoi*, besides wielding political power (see quotations from Thgn. 675-80 above), are also presented as being in control of legal procedures, thereby applying in everyday life their subversive perceptions of justice.

For Theognis a noble (ἀγαθός) man is inherently just (δίκαιος) (145-8) and justice is a noble principle that encapsulates the spirit of the aristocratic way of life (ἐν δὲ δικαιοσύνῃ συλλήβδην πᾶσ᾽ ἀρετή ᾽στιν, 147; κάλλιστον τὸ δικαιότατον, 255; ἀμφ᾽ ἀρετῇ τρίβου, καὶ τοι τὰ δίκαια φίλ᾽ ἔστω, 465). Frequently justice is presented as divinely inspired (ὁσίη δίκη holy justice, 132; εὐθείῃ θεῶν δίκῃ ἀθανάτων the direct justice of the immortal gods, i.e. as opposed to the justice administered by crooked citizens, 330).[19] In a couplet the poet assumes the voice of a judge[20] and equates justice with evenhandedness (543-4: χρή με παρὰ στάθμην καὶ γνώμονα τήνδε δικάσσαι, Κύρνε, δίκην, ἶσόν τ᾽ ἀμφοτέροισιν δόμεν). Contrary to this aristocratic ideal, Theognis' contemporary world is presented as replete with duplicity and crookedness (e.g. Thgn. 73-82; 91-2; 93-6, 101-12 and passim).[21] Theognis blames the 'base' for this state of affairs: 'what the noble consider vices are deemed virtues by the base (τὰ τῶν ἀγαθῶν κακὰ γίνεται ἐσθλὰ κακοῖσιν) and they (i.e. the 'base') rejoice in perverted ways (νόμοις)' (Thgn. 289-90). With particular emphasis on justice, Theognis points out that the base 'formerly knew neither justice (δίκας) nor laws (νόμους)' (53-6) but are now in control of the city and thus able to impose their 'base view of justice' (κακῶς τὰ δίκαια νομίζειν, 279). As a result, lawlessness and anarchy rule, and the city is on the brink of self-destruction.[22]

What is more deplorable for Theognis, however, is the fact that judicial proceedings are often controlled by the *kakoi*. Administration of justice, along with statutory law, was clearly perceived by Theognis as extremely important in preserving social equilibrium in the *polis*. Moreover, as some Greek authors recognized (e.g. [Arist.] *Ath.* 9.1; see discussion in Chapter IV), the political power of a certain social group can be partly measured by the extent to which that group was able to promulgate law and hold sway

over the city's courts. Theognis provides very little information on lawmaking procedures or the content of statutes in late archaic communities but makes abundantly clear that, in his view, justice was largely administered by and suited the interests of the *kakoi*. The base 'give judgments in favour of the unjust for the sake of their own profit and power',[23] a statement that Theognis elucidates in other parts of the corpus by asserting that the *kakoi* seize possession of their opponents' property through legal manipulation.[24] This is bound to lead to social unrest (στάσις), civil strife (ἔμφυλοι φόνοι) and tyranny (μούναρχοι).[25]

But how exactly were Theognis' *kakoi* able in practice to control legal proceedings? The epigraphic and literary evidence examined in the previous chapter suggests that in a number of polities, by the time the *Theognidea* were composed and assumed their final shape, the multifaceted nature of the judiciary was well established, with different social groups laying claim to judicial authority. So when Theognis complains about the crooked utterances of unjust men (ἀδίκων ἀνδρῶν σκολιὸν λόγον, 1146-50) it is not implausible that he had in mind the same group of *kakoi* that he castigates in other parts of the corpus and that these *kakoi* and *adikoi* administered justice under conditions of adjudication similar to the ones attested in the contemporary epigraphic record. These persons with legal authority are accused of delivering a *skolios logos*, which in a legal context has the meaning of 'crooked verdict' and by extension 'crooked justice', comparable to the *skolia dikē* of Hesiod's gift-devouring kings.[26] What is different between Hesiod and Theognis is the social origin of those who habitually abuse justice by generating corrupt judicial decisions: the aristocracy in Hesiod, the lower classes and their leaders in Theognis.

The *kakoi* are, according to Theognis, able to cloak their crooked judgments in a shroud of legitimacy through 'false oaths' (ὅρκῳ πὰρ τὸ δίκαιον 200; ὀλεσήνορας ὅρκους 399; ὅρκοι δ' οὐκέτι ... δίκαιοι, 1139; cf. also 745, ὅρκον ἀλιτρόν). In fact, Theognis claims that he himself had been the victim of such crooked justice by the *kakoi* and that he had suffered loss of personal property as a result of it (341-50). Such behaviour is contrasted to the practices of the *agathoi* who are presented as inherently prone to justice and fair oaths (373-400). These passages quite possibly refer to cases of perjury in sworn testimonies by litigants, witnesses or judges. Especially in trials where only circumstantial or no evidence was presented, judicial oaths often had the validity of direct proof and were therefore extremely important in clinching the outcome of the trial. It is therefore not surprising that the abuse of judicial oaths emerges as a

growing concern among judicial authorities and lay citizens of late archaic polities.[27]

In sum, Theognis presents a picture of law and justice as completely controlled and manipulated by the *kakoi*, i.e. the lower social orders and their leaders (presumably upper-class men who championed the cause of the *dēmos*; see n. 17). Furthermore, the poet depicts law as a field of social and ideological contestation. Statutes, testimonies and verdicts could be manipulated as the need arose to promote personal or class interests. This situation is depicted as a recent phenomenon; the poet claimed he knew of a period when aristocratic ethics and judicial practices reigned supreme. Furthermore, the poet also presents as feasible the possibility that, with the co-ordinated effort of all the *agathoi*, aristocratic control of lawmaking and the courts could once again be restored.

Perjury and negligence: the manipulation of archaic legal systems

(a) The oath

To what extent does this picture of law and justice as presented by Theognis fit other contemporary evidence? The question is crucial not only for evaluating a complex source such as Theognis but also for our understanding of the workings and social significance of law during the period in question, especially because Theognis, like Hesiod in early archaic Greece, provides a vivid commentary on aspects of archaic law that are not normally illuminated by extant written laws.

One aspect of legal procedure that, Theognis claims, is repeatedly abused by the *kakoi* is judicial oaths. Independent evidence confirms the importance of oaths in the legal systems of various polities in late archaic/early classical Greece. More specifically, the epigraphic record demonstrates the central role of oaths in the administration of justice in these communities.[28] As a late sixth-century law from Eretria emphatically states, 'justice is to be done only after oaths have been administered' (δίκεν ἐπεὰν κατομόσει).[29] In her thorough examination of the Cretan dialect Monique Bile (1988, 352-3) has listed a variety of technical terms, all related to oath-taking and attested for the archaic period, such as ὁρκομότας (magistrates who supervise oath-taking), ὀμόται (magistrates who endorse a law by oath), ὁρκιότερος ('prevalent by oath'), ἀπόμνυμι ('deny by oath'), ἐπόμνυμι ('swear in accordance with'), ὀμομόται ('swear

together with'), συνεξόμνυμαι ('swear together in denial') and many more. The linguistic wealth is surely a reflection of the range, frequency and importance of oaths in the politics and courts of the communities of archaic Crete. Written laws from other parts of the Greek world, although not as numerous as in Crete, suggest a similar picture. Given the central importance of oaths in the administration of justice of archaic communities and their apparent significance in elucidating aspects of the workings of the courts and the reception of law, it is worth examining some of the uses and abuses of oaths, as revealed by epigraphic and literary evidence, in more detail.

Depending on the occasion, judicial oaths could be sworn by several parties involved in a legal case, including the litigants, witnesses and even the judges themselves. Indeed, numerous late archaic and early classical laws specify that frequently verdicts were pronounced only after the litigants and/or witnesses had taken an oath.[30] Often assertions that could not be substantiated by any other evidence made by litigants and witnesses were supported through evidentiary oaths. Frequently, after a formal charge has been filed, the defendant could clear himself by taking a purgatory oath.[31] Finally, in those instances where legal points of dispute remained after pleas have been made and all parties and witnesses testified, the judge frequently had to decide the case on his own oath, i.e. an oath of arbitration whereby he swore to deliver an honest verdict according to his own opinions but presumably in keeping with the general spirit of the law.[32] Another attested means of settling a dispute by oath was the oath-challenge, a process that usually involved the formulation of an oath by one of the litigants and an invitation to his opponent to swear it (but cf. the oath-challenges in the Homeric *Hymn to Hermes* discussed below).[33] Overall, the importance of oaths in the adjudication of disputes in many archaic communities can help account for the uneasiness that some archaic sources, like Theognis, display towards the allegedly frequent abuses of judicial oaths.

There was no universally agreed standard procedure for oath-taking in the courts across archaic Greece, and one can detect significant variations even within the same community. It is for this reason that very often laws specify the process and particular conditions (e.g. to which god the oath should be sworn; whose oath shall ultimately prevail) of oath-taking that litigants and judges had to follow during the settlement of disputes. For instance, a late sixth-/early fifth-century law from Gortyn provides a detailed list of procedures relative to judicial oaths.[34] This law, which very probably deals with oaths in trials related to inheritance or other property

matters, initially specifies that, in order to render a judgment, oaths have to be sworn (l.1, ὀμνύναι δὲ δικάκ̣[σαι) to Zeus, Apollo and Athena. Furthermore, it contains detailed provisions with regard to the kinship and citizenship status of all those required to swear an oath, and even envisages the contingency of perjury which it attempts to deter by imposing a curse (l. 10).

Such meticulous attention to the conditions of oath-taking was far from uncommon,[35] especially in late archaic laws from Gortyn. Another Gortynian law (*IC* IV 81 = *Nomima* II.47 = *IGT* 155, mid-fifth century; replicated almost verbatim in *IC* IV 75A), which deals with various aspects of mortgaged property ownership, suggests that, in connection with judicial oaths, under certain circumstances a majority principle was in operation: i.e. the side that ensured the greatest number of oaths, sworn by the litigant's supporting witnesses, won the trial. This law stipulates that witnesses,[36] including neighbours (l. 2 τῶν ὀμόρον; cf. ll. 19-20) familiar with the details of the case, were expected to swear oaths at various stages of the proceedings. Moreover, the law specifies the text of an oath[37] (ll. 11-15: ὀμνύμε[ν δὲ ἥ]μὰν τούτο μέν ἐστι ἀβλοπίαι δικαίος πρὶν μολέθ[θαι τὰν] δίκαν, ἥο δ' ἐνεκύρακσαν μὲ ἔμεν 'and he (i.e. the summoner) is to swear that the property was lawfully and rightly his before the suit was brought, but the man who took it as a pledge [is to swear] that it was not') and provides that the litigant who has attained the majority of oaths will prevail (15-16: νικῆν δ' ὅτερά κ' οἰ π[λίες ὀ]μόσαντι).

Van Effenterre and Ruzé (*Nomima* II, p. 172) suggest that ll. 15-16 do not necessarily suggest that all witnesses[38] involved in the lawsuit had to swear the oath in order for one of the litigants to prevail. The assumption is that the judicial authorities would have attempted to make the content and intention of the oath as unambiguous as possible (although, we might add, one might doubt the extent to which they were successful), in a way that, if a witness swore that particular oath, he could either truthfully swear it or commit perjury. As a result, requesting all witnesses to affirm or deny the same aspect of the case by oath would have amounted, the French scholars argue, to a tacit admission by the judicial authorities that some of the witnesses were committing perjury. Instead, the editors of *Nomima* suggest that upon reaching the appropriate stage of the proceedings, the court officials counted the witnesses who were willing to swear in support of each litigant. The witnesses who constituted the majority proceeded to swear the oath and the matter was automatically settled, while the minority, i.e. the witnesses who were willing to swear in support of the opponent, did not on this occasion take an oath. In other words, according to this

interpretation, νικεῖν δ᾽ ὅτερά κ᾽ οἰ π̣[λίες ὀ]μόσαντι, in addition to the greatest number of oaths sworn, also refers to the greatest number of witnesses mobilized in support of a litigant. This ingenious solution has many merits, including taking into consideration the expected effort of the judicial authorities to combat perjury as well as the effort exerted by litigants to elicit the support of as many of their fellow-citizens as possible. However, it must be admitted that in such a situation the judicial authorities could never be absolutely certain whether some of the witnesses who did swear the oath were committing perjury or not.

If this is the correct reading of *IC* IV 81.15-16, the attempts to prevent perjury or the manipulation of oaths clearly suggest, as do some archaic literary sources (Hesiod, Theognis), that in parts of archaic Greece the phenomenon of misleading and false oaths was much more widespread than the contents of many extant archaic laws would at first glance seem to indicate. But this is a point to which we shall return at a later stage of the present chapter. One also might add, as a parallel to the practice of prevailing in court by a majority of witnesses, attested in Gortyn, a law from Cyme, reported by Aristotle in the *Politics*, 1269a1-4. There is no direct indication that this law was indeed archaic, although Aristotle mentions it as an example of an ancient (ἀρχαίων) and out-of-date law. According to this law, if in a homicide trial the prosecution manages to produce a certain number of relatives as witnesses, then the defendant is convicted (ἐν Κύμῃ περὶ τὰ φονικὰ νόμος ἐστίν, ἂν πλῆθός τι παράσχηται μαρτύρων ὁ διώκων τὸν φόνον τῶν αὐτοῦ συγγενῶν, ἔνοχον εἶναι τῷ φόνῳ τὸν φεύγοντα). To be sure, there is no mention of oaths in this passage, although, given the fact that sworn testimony appears to have been a quite widespread practice in the courts of justice of many archaic communities, it is a strong possibility that the witnesses in homicide trials in Cyme had to swear an oath.

It is to be expected that not all cases were decided by a majority of oaths. Gortyn once again provides the best illustration: in some instances laws reveal that the oath of one of the litigants and his witnesses was designated as prevailing in reaching a verdict (e.g. *IC* IV 45.B.3-4 = *Nomima* II.69 = *IGT* 135, Gortyn, c. early fifth century: ὀρκιότερον ἥμην τὸν ἐνεκυράκσαντ[α).[39] Moreover, often judges and other officials were also required to swear an oath. As the Gortyn Law Code explicitly points out, if a case could not be decided according to the existing laws and the sworn testimonies of the litigants, then the judge should decide on his own oath of arbitration (*IC* IV 72.XI.26-31 (= *Nomima* II.4 = *IGT* 181) τὸν δικαστὰν, ὅτι μὲν κατὰ | μαίτυρανς ἔγρατται δικάδδ|εν ἒ ἀπόμοτον,

δικάδδεν ἃι ἔ|γρατται, τõν δ᾽ ἀλλõν ὀμνύντ|α κρίνεν πορτὶ τὰ μολιόμεν|α). Several other laws confirm the integral part played by judges' oaths in judicial procedures in archaic Gortyn.[40]

Given the importance of oaths in determining the outcome of lawsuits, it is not surprising that laws and literary sources of the archaic period often betray a preoccupation with the integrity of oaths by witnesses, litigants and judges.[41] *Epiorkia* and other forms of oath-abuse could of course occur in a variety of contexts, not always legal, and indeed many references to perjury in literary sources can be interpreted as generic warnings against the danger of false oaths in any context. Yet some archaic sources, as well as later authors which refer to the archaic period, directly associate the theme of perjury with the administration of justice. A prominent example is found in a gloss in a late lexicographer (Bekker *AB* I, 242.19-22 δοξασταί = Ruschenbusch 1966, F 42) which suggests that, similar to the situation in Gortyn as suggested by *IC* IV 81 discussed above, Solon and by extension the judicial authorities in early sixth-century Athens recognized the threat of perjury and attempted to combat it. According to this late source δοξασταί: κριταί εἰσιν οἱ διαγιγνώσκοντες, πότερος εὐορκεῖ τῶν κρινομένων· κελεύει γὰρ Σόλων τὸν ἐγκαλούμενον, ἐπειδὰν μήτε συμβόλαια ἔχῃ μήτε μάρτυρας, ὀμνύναι καὶ τὸν εὐθύναντα δὲ ὁμοίως '*doxastai*: they are judges who determine which of the litigants swears correctly. For Solon asked the accused to swear an oath when he did not have contracts or witnesses, and similarly the accuser'.

Besides an almost certainly anachronistic reference to contracts, the substance of this procedural rule is largely accepted as genuinely Solonian by many scholars.[42] Gagarin (1997, 128; cf. idem 2006b, 269)[43] has argued that, similar to classical Athenian practice, the oaths of the litigants mentioned in the gloss were sworn during the preliminary hearing (ἀνάκρισις) in a process known in classical Athens as ἀντωμοσία, i.e. the process whereby the litigants swore to the veracity of their submitted pleas,[44] and that these oaths were not meant to be decisive and determinant of the outcome of the trial. Although Gagarin rightly points out the difficulties involved in envisaging as decisive the oaths sworn simultaneously by both litigants, the suggestion that the procedure described by the gloss occurred during the archaic equivalent of the *anakrisis* is not easily reconcilable with the function of the *doxastai* as described in the same passage. It is difficult to imagine why a magistrate would be at pains to determine which of the litigants 'swears truly' a preliminary ἀντωμοσία oath, especially since the matter was to be examined at length during the trial. The reference to the lack of witnesses,

if indeed it reflects practices at the time of Solon, strongly alludes to the effort of the judicial authorities to deter false and misleading oaths not only during the preliminary formalities (when the testimonies of witnesses were not always required) but also during the trial proper, when the breach or manipulation of oaths could clearly affect the outcome of the case.

Literary sources from the archaic period also suggest a link between the breach or manipulation of oaths and procedures of adjudication. Already in the early seventh century Hesiod warns (*Op*. 282-4, ὅς δέ κε μαρτυρίῃσι ἑκὼν ἐπίορκον ὀμόσσας ψεύσεται) that whoever willingly commits perjury while serving as witness and hence offends justice (δίκην βλάψας) is bound to bring harm upon himself and his descendants. In a separate passage the same poet proclaims that 'Oath runs faster than crooked justice' (*Op*. 219, αὐτίκα γὰρ τρέχει Ὅρκος ἅμα σκολιῇσι δίκῃσιν) and in the *Theogony* (783-806) he describes how even gods could suffer from committing perjury.[45] Besides Hesiod, the theme of breach of oaths crops up in Greek literature throughout the archaic period.[46] A lyric fragment, attributed by scholars to either Archilochus (79aD) or Hipponax (115 West), consists of a prayer against an enemy who broke his oath (ὅς μ᾽ ἠδίκησε, λὰξ δ᾽ ἐφ᾽ ὁρκίοις ἔβη, τὸ πρὶν ἑταῖρος ἐών). As we have already seen, abuse of oaths including, the context strongly implies, judicial oaths is according to Theognis one of the principal means whereby the *kakoi* manipulate and control the legal system (Thgn. 200; 399; 745; 1139). Finally, Hdt. 6.86 reports an oracle delivered, according to Herodotus' chronology allegedly in the early sixth century, to Glaucus from Sparta warning him, in the context of an episode with legal implications, of the perils of false oaths and the benefits of *euorkia*.[47]

In addition to these sources, it can be argued that, mythological elements aside, the Homeric *Hymn to Hermes* also provides some evidence for judicial procedures, especially the abuse of judicial oaths.[48] The subject matter of the Homeric *Hymn to Hermes*, which according to specialists was composed in its present form in the late archaic period,[49] is the dispute between two gods, the new-born Hermes and Apollo, over the theft of Apollo's cattle by Hermes, and the subsequent adjudication of the dispute by Zeus. In the course of the Hermes v. Apollo dispute there are two oaths that are volunteered by Hermes but are not actually sworn. The first of these potential oaths comes when, following the discovery of the theft, Apollo confronts Hermes. The latter claims innocence and offers to swear an oath (273-7): 'I was born yesterday and my feet are soft and the ground beneath is rough; nevertheless if you will have it so, I will swear a great oath by my father's head (πατρὸς κεφαλὴν μέγαν ὅρκον ὀμοῦμαι)

and vow that neither am I guilty myself (μὴ μὲν ἐγὼ ... αἴτιος εἶναι), neither have I seen any other who stole your cows whatever cows may be; for I know them only by hearsay'. The second attempt to swear an oath comes after the dispute has reached the stage of arbitration by Zeus. In his rebuttal to Apollo's speech, Hermes pleads his innocence and volunteers to swear an oath of denial (378-86): 'Believe my tale, for you claim to be my father, that I did not drive his cows to my house, so I may prosper, nor crossed the threshold; this I say truthfully ... You yourself know that I am not guilty (οὐκ αἴτιός εἰμι): and I swear a great oath upon it (μέγαν δ' ἐπιδαίομαι ὅρκον). No! by these rich-decked porticoes of the gods.'[50]

In both instances Hermes imposes upon himself an oath-challenge, but the content of each oath, and the manner in which Hermes attempts to use them, are problematic. A particularly vexing issue is the attempt by Hermes to formulate parts of his oaths in a way that they corresponded with what Greeks of later periods called an ὅρκος σοφιστικός, i.e. a sworn commitment that did not, strictly speaking, constitute perjury but which nevertheless circumvented the obvious meaning and intention of the oath by interpreting its content too literally or by playing on some ambiguity of meaning to produce a misleading interpretation.[51] For instance, in l. 276 Hermes volunteers to swear, as part of his oath formulated in verses 273-7, that he did not see any other person stealing Apollo's cattle, a statement that is factually accurate since Hermes alone was the culprit. Similarly, in ll. 379-80 Hermes offers to swear that he neither drove the cows to his house nor he crossed the threshold in their company, both accurate statements since he had hidden them in a cave. These assertions are clearly attempts to swear factually accurate albeit misleading 'sophistic' oaths. But since, in addition to his attempts to manipulate the meaning and interpretation of the oaths, in both instances (ll. 273-7 and 378-86) Hermes also volunteers to swear that he is not guilty (αἴτιος), an assertion that is clearly mendacious, in reality he effectively endeavours to acquit himself by committing perjury. On both occasions the challenge is ignored by Apollo and Zeus, so there is no way of knowing whether Hermes really meant to swear these false oaths or whether he was offering them simply for rhetorical effect. Nevertheless, the evidence for oaths in the Homeric *Hymn to Hermes* is in agreement with the Menalaus v. Antilochus dispute (*Il*. 23.566-85, discussed in detail in Chapter II) in depicting oath-challenges as versatile legal tools in dispute settlement.[52] Moreover the hymn suggests, in accordance with other archaic literary sources, that some litigants could potentially manipulate their oaths in court as part of their wider strategy to gain a legal advantage.

In addition to these literary texts, written laws also betray an uneasiness regarding the possibility that oaths sworn in courts of justice could be abused.[53] As we have already pointed out, many written laws include provisions describing in great detail the procedures to be followed in oath-taking and the penalties to be imposed in the case of infringement of such procedures. Such provisions can be interpreted not only in the light of the lack of universally accepted procedures, even within the same community, regarding the use of oaths but also as a token of concern on the part of lawmaking authorities of some archaic cities that oaths could be abused. Thus, in addition to the examples from Gortyn presented above (especially in connection with *IC* IV 81 and the meaning of ὀρκιότερος), one might add the fragmentary early/mid-fifth-century law from Elis concerning the neighbouring and perhaps dependent community of the Skillountians (*IvO* 16 = *Nomima* I.56 = *IGT* 44) which stipulates that an oath, very possibly in a trial resulting from civic *stasis*, shall be sworn to Olympian Zeus (ll. 11-12: ὀμόσαντες πὸ(τ) τὸν θεὸν τὸν Ὀλύν[πιον]; cf. l. 9 where the extant text reads αἰ δέ τις στάσιν ποιέοι), a stipulation added perhaps in order to guarantee the integrity of the oath. Moreover, in the same law from Elis the passage describing the process of oath-taking is followed by a section (ll. 12-15) prescribing the penalties to be imposed, very possibly in the contingency that the oath-taking procedure was not observed. Often the menace of future penalties in cases of oath-abuse took the form, familiar in Greek laws, of a curse, e.g. *IC* IV 51 (= *Nomima* II.13 = *IGT* 139) a law of the late sixth-early fifth century from Gortyn, discussed above, which contains an imprecation 'to suffer the worst death' (κακίστοι] ὀλέτροι ἐκσόλλυθαι) in instances of perjury or abuse of judicial oaths.

Moreover, extant laws from Gortyn are at times especially concerned with instances of refusal, on the part of litigants or witnesses, to swear an oath in court. For instance, a late sixth-century law from Gortyn (*IC* IV 45.B.5-6 = *Nomima* II.69 = *IGT* 135) stipulates against those who refuse to swear an oath in front of the judges in court (αἰ δὲ μὴ ὀμόσαιεν πὰρ τõι δικαστâι) and possibly ensures that in such a contingency the legal opponent shall prevail. Other examples include *IC* IV 28 (= *Nomima* II.12), a law of the early sixth century from Gortyn, containing a clause against those who refuse to take an oath of denial (οἵ κα μὴ ἀπόμοσεν), followed by an imprecation or penalty (uncertain due to the obscure Greek); the so-called Little Code of Gortyn, usually dated to the end of the sixth/early fifth century (*IC* IV 41.V.1-3 = *Nomima* II.65 = *IGT* 127 and 128), which includes a clause against an individual (a litigant? a judge?) refusing to take an oath: α[ἰ δέ] κα μὴ ὀμόσει, τὸ ἀπλό<ο>ν

καταστασεῖ; and *IC* IV 47.23-4 (= *Nomima* II.26 = *IGT* 138), a law of the early fifth century also from Gortyn, which includes a clause against a litigant refusing to swear an oath according to the provisions outlined in previous sections of the law: αἰ δέ κα μὴ ὀμόσει ἃι ἔγραται.

Archaic laws frequently also stipulate against judges and other civic authorities who might abuse oaths or refuse to adjudicate by oath. In the case of Gortyn this concern is understandable, given the power of the judges to determine the outcome of certain legal cases by oath in cases of statutory gaps or conflicting evidence provided by the witnesses (see n. 40). Hence an early-fifth-century law from Gortyn, specifying some responsibilities and limitations of the power of judges, prescribes that refusal to take an oath on the part of the judge and the *mnamon* is tantamount to a refusal to mete out justice (*IC* IV 42.B.6-9 = *Nomima* II.5 = *IGT* 129*): αἰ δέ κα μὲ ὀμόσ|οντι κελομένο (i.e. the judge), κατὰ τὰ αὐτὰ πράδε|θαι τõ μὲ ὀμόσαντος ἃιπερ αἴ κα μὴ λ|ηι δικάκσαι). It is worth pointing out that the clause in question is inscribed by a different hand from that of the immediately preceding provision, hence suggesting a later addition and as a result alluding not only to a constant re-evaluation of the role and duties of the judges by the law-enacting authorities of Gortyn but also to specific problems regarding the use of oaths. Moreover, it should be noted that a new fragment containing the last clause of this law was discovered in 1960 in the vicinity of Gortyn, written by a scribe different from the two involved in the production of *IC* IV 42. It is not clear whether the new fragment comes from a second copy of *IC* IV 42 or whether that particular clause was repeated verbatim in a different written law. Be that as it may, this fragment is a token of the importance ascribed by the legislative authorities of Gortyn to the delimitation of judicial powers and the attempt to prevent judges' negligence as a means to achieve a functional and successful legal system.[54]

In sum, clauses prescribing the correct way to swear an oath and imposing hefty fines and/or imprecations on the litigants, witnesses and judges who infringe any step of the legal oath-taking process testify to the ambiguous relationship that some archaic Greeks had with the legal oath. On the one hand, the oath was endowed with divine authority, as was Justice herself (cf. Chapter II). Yet the repeated attempts in extant written laws to prevent either perjury or refusal to swear an oath betray an implicit uneasiness that, despite the danger of divine retribution and the other punishments that civic authorities were threatening to mete out, oaths could be easily manipulated. This discontinuity between ideal and practice can be partly explained if we accept that, despite the religious reservations and the

deterrents introduced by civic authorities, some litigants habitually abused their oaths in order to achieve success in a court of justice.

(b) Judges and magistrates

An additional manifestation of negligence within the legal systems of archaic communities can be detected in legal provisions against magistrates who fail to perform their judicial responsibilities appropriately or who infringe the letter of the law. It has been suggested that the comprehensive ban imposed on ex-*kosmoi* in seventh-century Dreros (*BCH* 61 (1937), 334 = *Nomima* I.81 = *IGT* 90), preventing them from serving in the same position for ten years, was a means to restrict the abuse of judicial processes by such *kosmoi* acting as judges.[55] The same preoccupation with potential breaches of the law by magistrates and judges, especially in relation to the administration of justice, can be detected in other archaic laws from Gortyn. For instance, a statute roughly contemporary with the Law Code stipulates fines against the refusal of an arbitrator to adjudicate a case (*IC* IV 82 = *Nomima* II.8 = *IGT* 156, Gortyn mid-fifth century: αἰ [δέ] κα μὲ ἐδδικάκσει, αὐ[τὸν] ἀτέθαι ̔ο κ᾽ ἐπ[ιτρά]ποντι τὸ κρέ[ιο]ς ὑπὸ τ̃οι μεμπομένο[ι]).[56] In other parts of Greece, we have already encountered the early sixth-century (c. 575-550 BC) law from Chios (ML 8 = *Nomima* I.62 = *IGT* 61) which prescribes fines for the negligent performance of judicial responsibilities by the local *basileus* and *dēmarkhos* and outlines the procedure for appeals of their verdicts at the 'people's council' (βολὴ δημοσίη), consisting of fifty representatives from each tribe.[57] Gagarin (1986, 90) is right to point out that 'the provision for some sort of appeal to a popular council indicates that the Chians felt dissatisfaction with some of the decisions of their judges'. Moreover, a clause from the mid-fifth-century law from Naupactos in Lokris (*IG* IX 1^2 3.718.41-5 = *Nomima* I.43 = *IGT* 49), also discussed above, stipulates that the *arkhōn* who fails to prosecute (τὰν δίκαν δόμεν) will lose his civic rights (ἄτιμον) and have his personal property confiscated.

The late archaic laws from the *polis* of Elis, discovered at Olympia, also reveal a high degree of preoccupation with failing or negligent magistrates and judges, suggesting that problems related to such officials were endemic in Eleian politics and justice. For instance, a late sixth-century law (*IvO* 7 = *Nomima* I.109 = *IGT* 41-3) provides that any judicial decision that goes against the letter of the law shall be null and void (αἰ δέ τις πὰρ τὸ γράφος δικάδοι, ἀτελές κ᾽ εἴε ἃ δίκα), a clear attempt to deter negligent judges. Another revealing example of civic concern with officials'

negligence is the early fifth-century law (ὰ ϝράτρα τοῖς ϝαλείοις) concerning the scribe Patrias (*IvO* 2 = *Nomima* I.23 = *IGT* 37). This law defines in great detail the responsibilities of several civic officials ('the highest magistrate', the kings, the *Hellanodikai*, the *damiorgoi*, the *mastroi*[58]) authorized to deal with any potential problems related to Patrias and specifies the fines to be imposed on these officials should they fail to perform their duties. This law marks very clearly a central feature of politics and justice in many Greek cities, i.e. that accountability in public life was almost never to be sought in one magistrate but was rather perceived as multi-layered and diffused among many public officials (on this issue see also our discussion in Chapter IV, passim). In other words, the system was set up in such a way as to minimize the possibility of corruption and negligence, often by making the state officials keep an eye on each other.[59]

More generally, laws from various parts of archaic Greece include provisions against negligent magistrates. According to the *Athēnaiōn Politeia*, following the enactment and the publication of the laws of Solon the nine archons swore on an annual basis to dedicate a golden statue if they had been found to have violated any of them (7.1: οἱ δ' ἐννέα ἄρχοντες ὀμνύντες πρὸς τῷ λίθῳ κατεφάτιζον ἀναθήσειν ἀνδριάντα χρυσοῦν, ἐάν τινα παραβῶσι τῶν νόμων: ὅθεν ἔτι καὶ νῦν οὕτως ὀμνύουσι; cf. Plu. *Sol*. 25.2 who argues that the 'council' (βουλὴ) and the *thesmothetai* swore to ratify the laws of Solon). A sixth-century law from Argos (*IG* IV 506 = *Nomima* I.100 = *IGT* 29; c. 575-550 BC) stipulates penalties for those who ignore or alter the provisions of the law (ll. 1-2: τὰ γράθματα τ' αδὲν h<ὲ> ἄγνοι hὲ συγχέοι). The same law strongly alludes to circumstances of political crisis (l. 7 contemplating the possibility that there are no *damiorgoi* in office), which makes it possible that the interdiction against overlooking or altering the law in the opening clause refers to specific historical circumstances, possibly involving political factions and groups of magistrates. Finally, a late archaic/early classical law from Thasos (*Et. Thas.* XIV.1992 = *Nomima* II.95)[60] provides that on specific occasions city officials shall collect the fines from citizens who flout the provisions of the law and further prescribes that the fine shall be doubled and shall be paid by the officials themselves in case the original amounts are not collected.[61] The numerous sanctions against negligent judges and other magistrates in laws of some archaic communities constitute a token of the scale of the concern regarding potential malpractices by judges, court officials and other magistrates as well as a

powerful reminder of the extent to which such breaches of procedure and substantive law were likely to occur.[62]

Can anything be deduced regarding the social context of the deterrent clauses in archaic laws against magistrates, judges and other officials? In the previous chapters (especially Chapters II and IV) it was argued that during the archaic period political leaders, magistrates and judges were largely drawn from the elite. Yet despite the apparent predominance of the aristocracy in politics and the judiciary, as the preceding overview of the evidence indicates, a number of archaic and early classical laws enacted by communities across the Greek world include provisions against negligent magistrates. Such provisions suggest an inter-aristocratic struggle for political and judicial authority,[63] a popular reaction to the abuses of power by the elite, or a combination of both. Moreover, besides the legal provisions regulating the judicial powers of magistrates and judges, members of the lower classes could also, as Theognis suggests, work the system and gain a legal advantage through perjury and other legal tricks. The significance of the last point must be evaluated in the context of the public nature of the archaic administration of justice which, as argued in Chapters II and IV, provided further opportunities for the lower social orders to achieve success in a legal context. Overall, the evidence for sanctions against negligent magistrates and judges concurs with the inference, provisionally reached in other parts of the book, that in a number of communities in late archaic Greece, the aristocratic control of politics, law, and the administration of justice was occasionally challenged and undermined in the courts and everyday settings by ordinary Greeks.

(c) Judicial curses

In an attempt to promote their interests and succeed in court, litigants could resort to a number of tactics, from rallying networks of supporters to the manipulation of judicial procedures and oaths. In addition to the above, extant judicial *defixiones* (roughly divided into prayers, examined in Chapter I, and curses) suggest that appeals to the supernatural were another common means of seeking a legal advantage. Judicial prayers primarily aimed at mobilizing divine forces in the hope of securing retribution and justice and were connected with the perception that Justice was ultimately divinely inspired. The most common type of *defixio iudiciaria* is however the judicial curse, written usually on a lead strip and buried. Several hundred have come to light so far, dating from the late archaic to the late antique periods and originating from even the furthest corners of the

ancient Greek world. The consistency and popularity of such curses through the centuries suggest a deeply ingrained tendency on the part of many Greeks to 'take matters in their own hands' with regard to the administration of justice. It is noteworthy that, although the references to supernatural elements in these curses might vary and change over time, the basic tenet behind their production remains unchanged: to secure success in court through the magical binding (καταδεσμός) of the opposition.

Judicial curses were aimed at a number of legal actors, most commonly the opposing litigant as well as his supporting witnesses and friends. For example, a late sixth-/early fifth-century *defixio* from Selinous in Sicily (Jordan 1985, no. 95= *SEG* 26.1113) curses the tongues of a man and his σύνδιϙος,[64] apparently legal opponents of the author of the curse. Similarly, a late sixth-/early fifth-century *defixio* found at the sanctuary of Demeter Malophoros at Gaggara near Palermo (Jordan 1985, no. 99 = *SEG* 4.37-8 = *Nomima* I.5)[65] contains a curse which is directed against a man from Selinous (Σελινόνντιος) and then repeated for the ξένοι σύνδιϙοι and two other named individuals, thus suggesting a judicial context. Judicial curses of the classical period are even more revealing, and can be fruitfully examined for comparative purposes, especially for cities whose legal system is better documented. Thus a *defixio* found in a grave in the Kerameikos in Athens (Jordan 1985, no. 9, early fourth century BC) next to a voodoo/magic doll contains a list of nine male names followed by καὶ ἔ τις ἄλλος μετ᾽ ἐκένο ξύνδικος ἐστι ἓ μάρτυς (witness). Witnesses receive a great deal of attention in judicial curses, almost certainly a reflection of their importance, in the eyes of the litigants, in determining the outcome of litigation. For instance a *defixio* from Athens includes a binding of a certain Phereklēs, a witness for Theagenēs (Audollent 1904, no. 49, 10-12, Athens, late fourth-century?: κα]ταδῶ δὲ καὶ Φερεκλέους [γ]λῶτταγ καὶ ψυχὴν [καὶ μ]αρτυρίαν ἢ(ν) Θεαγέ[νε]ι μαρτυρεῖ). A curse from Mytilene (Jordan 2000, no. 48, fourth-third century BC) mentions a number of names followed by καὶ ὅσοι μελλέοι[σι] περὶ αὖτων ἔρην ἢ πό̣[ην], quite possibly a reference to testimony in court. Another *defixio* from Athens (Jordan 2000, no. 14, fourth century BC) curses a number of men so that they will appear to the judges (δικασταῖ<ς>) to be speaking and acting unjustly (ἄδικα γὰρ καὶ ποιοῦσιν καὶ λέγουσι). Finally, it is worth pointing out that in a fourth-century BC curse from Olbia (northern Black Sea coast; Jordan 1985, no. 176)[66] the *defigens* directs his curse, in addition to a number of named individuals, against those who συνηγοροῦσι καὶ παρατηροῦσι. This reference to onlookers and other casual participants presents a striking

similarity to the allusions in Homer and Hesiod (see Chapter II) to the influence and social pressure that could be exerted by the assembled crowd in the courts of early archaic Greece.[67]

Regardless of how one interprets these curses, they are undeniably a valuable source for our understanding of the perception of law and its reception in the courts of justice and everyday life. One way of looking at them is as tokens of an entrenched mistrust of the formal legal apparatus and its constituents (e.g. court proceedings, witnesses). Feeling helpless and unable to cope effectively with what they perceived as the powerful support networks of their opponents,[68] the authors of these texts resorted to magic, imprecations and appeals to the supernatural in order to achieve a favourable verdict. Alternatively, one can view judicial curses as another advantage strategy employed by litigants across the Greek world. In this view, law is not a dominant force that one should passively comply with. On the contrary, law is a social construct that needs to be fully engaged with, resisted and manipulated if one is to promote one's agenda and achieve success within the legal system. Hence litigants proceed to curse their legal opponents and their supporters in an attempt to gain every possible advantage in court.[69] In that sense, judicial curses can be seen as unorthodox and resistant legal narratives challenging the fabric of a complex and at times uneven (as perceived by the *defigens* and other litigants) legal system. The two interpretations are not contradictory, and it is quite likely that it was a combination of such ideas about law and how to deal with it that informs most of the extant judicial *defixiones*.

Conclusion

Following in the tradition of Homer and Hesiod, the poetry of Solon and Theognis provides valuable insights regarding perceptions and attitudes towards law and adjudication. Solon, the appointed mediator in the acute social crisis that afflicted Athens during the late seventh and early sixth centuries BC, attempted to overhaul the judicial system through his reforms and subsequently explained his intentions and objectives through the medium of his poetry. The poetry of Solon is valuable, among other reasons, because it provides an explicit link between law, political power and social conflict. As I have pointed out in previous chapters, the source and origins of law are frequently taken for granted in archaic literature (e.g. in Homer and Hesiod) and only succinctly alluded to in the sanctioning formulas of many written laws. It is something that most members of archaic communities, or at least the audiences of archaic literary sources, were expected to be familiar

with, and as a result the subject-matter had a low appeal for archaic authors. It is usually in times of acute crisis, like the one preceding the reforms of Solon, that the sources explicitly articulate a connection between lawmaking and political power. By contrast, the implementation of law in the courts and its impact on everyday life were bound to be more contentious matters, due to the direct involvement of litigants in the adjudication proceedings and the settlement of their disputes. Theognis is a valuable source in that respect, since he describes the experiences of a late archaic Greek aristocrat who has strong opinions about the legal system of his community. Theognis portrays law and the administration of justice as a socially and ideologically contested category. He associates law and justice with economic and class interests. Law is portrayed as essential to the effort of the *kakoi* to assume control of politics and wealth. On the other hand, traditional elitist discourses and practices of justice are, according to Theognis, central to the aristocracy's opposition and counteroffensive to regain control of the *polis*. Overall, the poetry of Theognis elucidates aspects of elitist ideology relative to law and the administration of justice and provides valuable evidence for the social significance of law in general.

Most importantly, Theognis depicts law and justice as open to exploitation and manipulation by different quarters within the community, an inference that squares well with evidence deriving from archaic written laws. Such laws often contain lengthy provisions regarding the correct procedure of oath-taking in the courts as well as provisions against perjury and law infringement on the part of the judges, officials, litigants and witnesses. Judicial curses written by actual litigants also portray the anxieties over the function of the legal system as well as the possibilities of exploitation and manipulation of the judicial apparatus, as perceived by lay legal actors embroiled in litigation. Overall, the consistent efforts of, on the one hand, civic authorities across archaic Greece, to prevent malfunctions of the legal system of their communities and of litigants, on the other, to achieve success in court, testify to the wider impact of law in the polities of late archaic Greece. Statutory law and its practical applications in the courts of justice were often strategies employed by individuals in the ongoing struggle for political and social ascendancy. As a result, our sources often allude to the constant renegotiation of the meaning and practical application of law in a number of late archaic and early classical *poleis*. Laws were never unanimously interpreted and applied, but rather the evidence often suggests a multitude of co-existing legal behaviours, perceptions and interpretations that often overlooked the letter of written statutes and articulated existing social feuds.

Conclusion

In many parts of archaic Greece, law was truly all around. At times religious and civic public locations were brimming with inscribed laws; attendance at court proceedings was open to every interested party, including observers with little or no connection to the trial in question; and laws and lawsuits were often the topic of intense everyday conversation and debate. Law was thus lived, obeyed, challenged and reshaped on a daily basis. Law was overwhelming and magisterial but at the same time elastic and protean to suit the needs, aspirations, strategies and beliefs of the ordinary citizens who came in contact with it.

The preceding chapters have examined several facets of the interaction of archaic Greeks with the law and the administration of justice of their communities. The extant evidence is patchy and comes mostly from Crete and Athens; local variations in procedure and substantive law certainly existed. Yet the evidence also suggests some common ground in the structure of the various legal systems as well as of the attitudes and behaviour of legal actors. Hence early archaic evidence, especially Homer and Hesiod, suggests that the social and political elite had a monopoly in defining law and meting out justice. The lower social orders, on the other hand, were largely expected to comply with the community norms articulated by the elites. But their situation was not as powerless as it might appear. First of all, when faced with a contentious situation, potential litigants were confronted with a number of options, the two most important of which were to attempt to settle the issue privately without recourse to civic judicial authorities or to bring the issue in front of the court of the *basileis* and the *gerontes*, as described in Homer and Hesiod, for adjudication. Hesiod suggests that litigants disillusioned with the justice dispensed by the aristocracy might have opted for the first solution as their choice in settling disputes. Secondly, even when a dispute reached the court, there was plenty that the litigants could do to influence the outcome of the case. In an overwhelmingly oral social and political environment, oratory was crucial for success in politics and the courts, with regard to

both the judges and the litigants. Moreover, the mobilization of the network of friends and relatives who acted as witnesses and supporting observers was one of the most important legal tactics employed by lay legal actors. A wide range of archaic sources, from Homer and Hesiod to written laws and judicial curses, suggests the crucial role of such networks in the context of archaic legal systems. Witnesses and other supporters played a critical role in voicing their support, cultivating a positive social image for the litigants and ultimately tipping the scales towards a favourable verdict.

This much can be deduced from a period in the history of Greek legal systems before the adoption of writing for the recording of community norms. Despite the lack of written law from early archaic Greece, it is evident that in the eyes of many Greeks of the ninth to the early seventh centuries (the historical period roughly depicted by the Homeric epics and the poetry of Hesiod) the legal system of their communities did not lack in legitimacy and authority because it lacked written law. Indeed, such an association between the authority of law and writing would have been unthinkable for eighth-century Greece, since writing was in very limited use at the period in question, and it is thus unlikely that the implications of its use in public life could have been grasped. Law was thus orally articulated and transmitted through poetry, community traditions and the decisions of the courts. Even when people like Hesiod complain about the greediness of the *basileis*/judges, his criticisms did not aim at undermining the foundations of the legal system, which he believed was endorsed by Zeus, but were rather directed against the practices of particular individuals who abused the law.

At all events, it is clear that in the case of archaic Greece law did not necessitate the use of writing, but starting from about the middle of the seventh century writing began to be extensively used to record law. Why this was the case remains one of the big and debatable question marks of the study of archaic law. Many commentators associate the emergence and expansion of written law with the expanding institutional apparatus of the *polis*. Others see written law as a concrete expression of intra-elite struggle for power. There is indeed some truth in both these views, but, as I have argued in Chapter III with regard to the enactment of law, extant written laws of the archaic period largely imply a much wider and more complex network of social relations and ideologies as the impetus behind the emergence of written law.

Extant archaic statutes suggest that, in a number of archaic communities, a number of legislative authorities were responsible for drafting and enacting legally binding ordinances. The archaic *dēmos*, possibly in the

form of a legislative assembly, is frequently encountered in archaic inscriptions as the endorser of statutory law and decrees. However, other subdivisions of the population, such as the tribes, also at times possessed legislative authority. In other archaic communities (e.g. Sparta) a multi-stage system of lawmaking was put in place, usually involving a council with *probouleutic* powers and a popular assembly with the right to endorse or reject the bills brought forward by the council. Presented with such a mosaic of lawmaking mechanisms one should resist making historical generalizations regarding the development of particular legislative bodies and procedures. However, the evidence quite strongly suggests a pattern of diffusion of deliberative and legislative power across the social board within many communities of archaic Greece. What we witness in these communities is not a solid constitutional apparatus, but rather a co-existence and conflict of multiple political and legal authorities. Indeed, the right to enact legal norms and administer justice was at times appropriated by different groups from those who, in early archaic Greece, had considered it as their god-given privilege. It is easy to see how these conditions could contribute to civic crisis and conflict which frequently extended beyond the struggle for a stake in the legal resources of the community. This last point helps explain the often assumed but largely false connection between written law and democracy. As other historians of archaic law have pointed out,[1] it would be wrong to assume that written law eventually led to more egalitarian forms of government because written law is somehow, on a metaphysical level, inherently democratic. Rather, as this study has argued, it is more likely that because more egalitarian forms of government and social relationships were emerging,[2] social conditions were becoming more frequently articulated in written law. Once this historical perspective is adopted, it then becomes easier to envisage archaic law not as a mere purveyor of egalitarianism but as a catalyst for further social and political change.

Our analysis of the judicial apparatus in the various communities of archaic Greece also reveals the administration of justice, as well as the reception of judicial decisions, to be at times highly contested and arbitrary. In early archaic Greece justice is meted out by the members of the political elite, identified in Homer and Hesiod as *gerontes* and *basileis*. Extant inscribed laws throw additional light on this aspect of the various archaic legal systems as well. The earliest surviving complete enactment from Dreros indicates that the *kosmos*, the highest executive magistrate, exercised judicial powers. Other laws also suggest that, starting in the seventh century BC, in many Greek cities civic magistrates assumed some

judicial responsibilities. Given the attested growth of archaic Greek communities and their legal systems, it is not surprising that further specialization within the ranks of the judiciary often occurred. Hence laws, especially of the sixth century, suggest not only that specialist judges and court officials were introduced in a number of communities across Greece, presumably taking over some of the judicial powers previously attributed to executive magistrates, but also that the first popular courts were also emerging, in places like Chios and Athens. Hence once again, even though one cannot claim a homogeneous development across Greece, what we find attested is a tendency towards increased professionalization and diversity. Like the right to enact law, so the right to administer justice was also highly contested and negotiated. Many archaic Greeks must have realized that, in the context of the city-state, control of the judiciary and the courts could be easily translated into political power, and therefore individuals and social groups strove to establish a presence among the judicial authorities of their communities, in accordance with their political position.

But how did individual Greeks react to all these developments? In the first chapter I argued that in order to appreciate better the impact of law in everyday life we need personalized accounts of interaction with the law. The poetry of Hesiod, Solon and Theognis provides us with such accounts and has been analysed as such in Chapters II and V. It has been argued that there is a marked qualitative difference between Hesiod and the literary sources of the sixth century. Hesiod, on the one hand, presents us with a legal narrative that is critical of the justice system of his community, especially the greedy *basileis*/judges, but which does not fundamentally challenge the established structures and procedures of the system. Solon and Theognis, on the other hand, suggest that by the sixth century several manifestations of law, including lawmaking and the administration of justice in the courts, have become embroiled in social conflict. Solon, in the tradition of the archaic lawgivers, was personally involved in mediating the social and economic crisis in early sixth-century Athens, and introduced an extensive set of legal reforms to redress the problems that afflicted his native city. Theognis, for his part, presents an acerbic critique of the legal establishment of his city, but for reasons entirely different from Hesiod: he claims that abuses of the legal system were rife and he blames the *kakoi*, who act out of self-interest, for this state of affairs. It is quite evident that all these authors understand law not as a series of dry regulations but as an arena of social conflict, and more specifically as a struggle between opposing social classes to impose their own understanding of the law as the dominant legal paradigm within the community.

This picture of law as a negotiable and contestable category is further corroborated by epigraphic evidence. Late archaic laws frequently include provisions against irregular proceedings, especially with regard to oaths and negligent magistrates, suggesting that such issues were of great concern and frequent occurrence. It appears that in addition to mobilizing their networks of friends and relatives to act as witnesses and supportive onlookers in the courts, many Greeks did not hesitate to bend the law and judicial proceedings in order to achieve the desired result. Moreover, judicial curses, written or commissioned by litigants, provide examples of personal attempts to influence the workings of a legal system through magic and appeals to the gods, and they constitute an illustration of how important were all these strategies aimed at exploiting and manipulating the law. Hence the evidence indicates that many archaic Greeks not only brought their individual legal narratives to bear in their interaction with the law but also skilfully employed an armoury of techniques in order to succeed in the courts.

Greeks could not imagine their lives without law. Even when some of them thought that law had a life of its own, law in reality led as many lives as the citizens of archaic Greek communities who daily coped with it. Thus multifaceted and malleable, hegemonic and protean at the same time, law and its daily manifestations through written statutes, lawcourt battles and personal stories became an indispensable and integral part of the life of archaic Greek communities and one of the hallmarks of Greek culture.

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Appendix

From θεσμός to νόμος: The Terminology of Archaic Athenian Law

The poetry and extant fragments of the laws of Solon, along with other evidence for law in archaic and classical Athens, allow for the best-documented case-study of the development of legal nomenclature in a Greek *polis*.[1] In fr. 36.18 (cf. Plu. *Sol*. 3.5) Solon described his legislation as θεσμοί, a term also used by Draco to describe his late seventh-century law on homicide (*IG* I³ 104.20 = *Nomima* I.02 = *IGT* 11; cf. [Dem.] 43.57 for the secure restoration of θεσμός). But in fifth-century Athens νόμος has replaced θεσμός as the most common term to denote statutory legislation, i.e. legislation drafted and endorsed by state authorities.[2] Examples abound but perhaps the most striking one is the late fifth-century decree regarding the republication of Draco's law on homicide. The decree survives in the same fragmentary inscription that records Draco's original law and refers to it as τὸ[ν] Δράκοντος νόμον (*IG* I³ 104.4-5) even though the seventh-century law described itself as θεσμός.

The shift from θεσμός to νόμος in the legal parlance of archaic and classical Athens has been extensively assessed. Some commentators have identified Cleisthenes as the chief instigator of this change. According to this view,[3] the term θεσμός, a derivative of τίθημι, implies a binding legal norm that has been imposed on the community by an authority endowed with unlimited and unchallenged legislative power, for example a lawgiver with extraordinary powers such as Solon.[4] With the advent of democracy *nomos*, of the same root as νέμω, supersedes *thesmos* and denotes the legislation that articulates the collective endorsement (including, in constitutional terms, the endorsement of legislation in the popular assembly) of the people.[5] Furthermore, the image of *nomos* as an expression of popular normative enactments was further reinforced in the fifth century through the monumental public display or at least the easy access to key democratic symbols, including the *axones* and *kyrbeis* containing the laws of Solon.[6]

To what extent does this view of Solon's θεσμοί as an act of an omnipotent lawgiver imposed upon a troubled community reflect the conditions of early sixth-century Athens? The more widespread use of derivatives of τίθημι in Athens and other parts of archaic Greece to designate statutory law could very possibly echo a period in which legislative enactment was the almost exclusive prerogative of a small ruling class. In historical terms this is a likely scenario, especially for some parts of early archaic Greece, as the evidence examined in Chapter II suggests. The θέμιστες of the Homeric world are in this sense 'imposed' upon a community, not agreed through a collective deliberative process, even if in practice these same norms later became widely accepted by most members of the community. The etymology of archaic θέμιστες/θεσμοί might also allude to the association between community law (and other civic acts, such as decrees) and the divine, also suggested by literary (see Chapter II) and epigraphic evidence (e.g. the invocation to the gods in sanctioning formulas of some extant enactments and their display near or on the walls of temples, e.g. in Dreros and Gortyn in Crete). All this evidence suggests that, in some cases at least, semantics might be a reflection of legislative practices and wider power relations between social groups in various communities of archaic Greece.

However, the link between technical terminology and legislative conditions on the ground must also be qualified by the fact, observed (Chapter III) in relation to the evolving semantics of terms related to political organization such as *polis, agora* and *boulē*, that often the exact nature of institutions and their powers assumed by such terms vary widely, even between neighbouring communities located in areas that display considerable parallels in their social and political organization (e.g. Crete) or within the same community over a period of time. Such observable discrepancies are partly due to the fact that, compared to institutions, official terminology that accompanies such institutions is often slower to adapt to novel political and social conditions. Hence, despite the apparent popularity of derivatives of τίθημι to designate statutory law in parts of early archaic Greece, it would be unwise to attempt to detect specific chronological cutting points (in Athens or anywhere else) for the introduction of new or the substitution of old nomenclature to designate law. By the end of the archaic period the term θεσμός was sufficiently flexible in some parts of Greece to designate a statutory enactment approved by the people (*AEph* (1934-5), 140-5 = *Nomima* I.102 = *IGT* 50), Thessaly, Atrax?, c. 475 BC, Θεθμὸς τοῖ δάμοι).[7] Solon's θεσμοί, introduced by an individual with extraordinary legislative powers but

articulating elements of social compromise that were necessary in abating the social and economic crisis endemic in Athens in the early sixth century, can be thus perceived as a intermediary point in the development of the vocabulary of law in archaic Athens.[8] In semantic terms these θεσμοί represented a dilution of the quasi-monolithic interpretation of the term, denoting norms superimposed upon the community by an external agency. Overall, it is far more probable that any changes in legal terminology, and especially in the the use of *thesmos* and *nomos*, in archaic and classical Athens were effected over long periods of usage and emerged as a result of, and not in conjunction with, pivotal moments of legislative and constitutional change (e.g. Solon and Cleisthenes).

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Notes

I. Greek Law and Greek Laws

1. Cf. also *Od*. 9.215 where Polyphemus is described as 'a savage man that knew nothing of justice or laws' (ἄγριον, οὔτε δίκας ἐὺ εἰδότα οὔτε θέμιστας).

2. The term 'archaic' is undeniably biased in the sense that it assumes a teleological development towards a more progressive classical era (see Cartledge 1999, 386). Yet given the almost universal use of the term in (especially anglophone) scholarship, it is adopted here as a purely chronological referent to designate the temporal borders of our inquiry, i.e. the period of Greek history from the Homeric epics (for their composition and chronology, see Chapter II below) to the so-called 'Gortyn Law Code' which was composed in the first half of the fifth century BC but quite possibly incorporates late archaic material.

3. A semantically wide term but best translated as 'justice'.

4. On this point see also Papakonstantinou 2004b.

5. See e.g. Humphreys 1983, 1985a, 1985b and 1988 (whose work also extends to archaic Greece, see below); Osborne 1985; Cohen 1989, 1991 and 1995; Todd 1993; Hunter 1994; Hall 1995; Christ 1998; Johnstone 1999; Allen 2000.

6. Besides the articles by Humphreys dealing with archaic Greece (1983, 1988, 1991), another major exception is the work of Eva Cantarella, e.g. 1976, 1979, 1987, 2002a and 2002b. I have not been able to use Farenga 2006, a book published too late in the preparation of this book to be substantially employed.

7. Cohen 1989, 82.

8. Foxhall & Lewis 1996b, 1.

9. Examples of and commentaries on legal positivism, empiricism and realism include Austin 1885; Garlan 1941; Kelsen 1961 and 1967; Sarat & Kearns 1993b, 33-41; Hart 1994 (originally 1961, for a sustained critique of this influential, even among historians of Greek law, study see Dworkin 1986); Schlegel 1995; Garth and Sterling 1998. This view of unilateral imposition of law informs (albeit mostly implicitly) much of the scholarship on Greek law, and it is sometimes concretely articulated by modern commentators, e.g. Ostwald 1969, 18-19 in relation to the meaning of the archaic *thesmoi* (see further in Appendix).

10. This remained the case until quite recently. See e.g. the apologetic tone of Wolff 1975.

11. Maine 1861, 62; for Henry Maine's work see A. Kuper 1985.

12. On the history of scholarship on Greek law see Todd & Millett 1990; Talamanca 1994; Hengstl 1994; Maffi 1998, 2001, 2004, 2005 and 2007.

13. E.g. Arnaldo Biscardi and H.J. Wolff.

14. Outstanding examples of this approach include Harrison 1968 and 1971; and MacDowell 1978. Another popular approach in past decades, exemplified by the work of Martin Ostwald, consisted in collating and examining all sources related to an idea or theme (e.g. written and unwritten law). Despite their great value, such studies present obvious analytical limitations for those interested in exploring the social and political ramifications of law.

15. See for instance Gagarin 1986 in what constitutes perhaps the most widely read and influential book on archaic Greek law published in the last two decades. After an attempt to construct an evolutionary model of archaic law (for an elaborate critique of which see Cantarella 1987; Burchfiel 1994), Gagarin proceeds to survey the epigraphic and literary evidence pertaining to law in the archaic period and concludes that it was mainly preoccupied with procedural matters. This assessment, although factually accurate, does not do justice to the complexity of archaic legal systems and almost entirely ignores the social implications of law. To be sure, I do not want to imply that there is nothing of value in the studies of Gagarin and the multitude of other scholars whose work ultimately derives from the positivist and realist traditions. On the contrary, such studies can be useful in more than one way. For example, Gagarin's readings of particular statutes, as well as his analysis of procedural matters in archaic law, are often very perceptive and analytically useful, as the many references to his work throughout this book suggest. Any attempt, undertaken in this book, to broaden the methodological and thematic horizon of the study of archaic law by looking at its production and reception, should not be viewed as a refutation of Gagarin and most other scholars who over the years have dedicated their scholarly efforts to the study of archaic Greek law, but rather as an extension of their efforts and achievements.

16. See for instance Ostwald 1986 who links law inextricably, and almost exclusively, with the development of state institutions (see also n. 17 below). Even more recently Carey 1998 documents the quantity of procedural and substantive law in late archaic and classical Athens. These examples are selected at random, and many more could easily be adduced.

17. Many studies on archaic and classical Greece (e.g. Manville 1997, 78-9 and passim; Blok 2005) explicitly associate written law with the institutional apparatus of the *polis*. The implication is that in the context of archaic Greece written law cannot exist without a political community with well-structured and stable institutions and vice-versa. This mode of thinking about law and political formation in archaic Greece is inflexible and cannot account for the wealth of political and legal experiences of archaic Greeks. Leaving aside the issue of the historical development of the *polis* and the predominance of the concept in modern historiographical discourses (both issues more complicated than assumed by most

scholars), it should be pointed out that the association of written law with a firmly established polity is neither absolute nor inexorable. In Papakonstantinou 2002 I have argued that a legal system can exist and be perfectly functional even in societies without formal political institutions and courts as developed in Greece, Rome and the modern western world. Furthermore, statutes do not have to be written to be recognized as law and be respected and enforceable (on oral and written law in archaic Greece see further Chapter IV). Hence for instance the Homeric epics portray aspects of the early archaic Greek political communities and their legal systems which relied heavily on an orally transmitted and legally binding set of norms. To argue, on the basis of an assumed strict interdependence between statehood and written law, that the Homeric world had no law because the *polis* was not yet fully developed or because there is no evidence for written law in the Homeric epics, would be a gross misrepresentation of the historical conditions in early archaic Greece. Similarly it would have been absurd if, after writing had been reintroduced in the Greek world, the lack of written laws from dozens of fully-fledged *poleis* of the late archaic period were taken as an indication that these *poleis* had no legal systems. It is quite feasible that many Greek communities never committed their laws to writing during the archaic period, if ever. But surely this would not mean that these polities had no legal system.

18. For the remainder of this book I shall refer to 'the law' in quotation marks to denote the restricted definition of the law as magisterial, unchallenged and state-controlled, encountered in scholars writing in the positivist and realist traditions. On the other hand, any reference to the law without quotation marks, and following the definition offered here, will refer to the law as the outcome of a wider network of interactions and negotiations conducted within both civic institutions and everyday settings. Moreover, generic references to law and legislation should be understood as comprising all enacted texts of legal implications (laws, decrees, contracts).

19. Some recent examples include Silbey 1992 and 2005; Hunt 1993; Sarat & Kearns 1993a; Leonard 1995; Coombe 1998; Ewick & Silbey 1998; Sarat & Kearns 2000a, especially Sarat & Kearns 2000b; Kahn 1999; Mezey 2001a and 2001b; Sarat & Simon 2001 and 2003; Sarat, Douglas & Umphrey 2002; Barzilai 2003; Griffiths 2003; Valverde 2003; Nielsen 2004; von Benda-Beckmann, von Benda-Beckmann & Griffiths 2005; Rosen 2006. Regarding ancient Greek law, and along cognate methodological lines, Humphreys 1985a and 1988 and Golden 2000 are also useful. Parts of Chapters II and V in particular build on Humphreys' assertion that law is a means whereby social groups in ancient Greece seek to impose certain paradigms of social organization and thus legitimize unequal power relations. Moreover, patterns of dispute resolution in various parts of archaic Greece as detected in this book are largely in agreement with the picture adumbrated for archaic Athens in Humphreys 1983.

20. Foxhall & Lewis 1996b, 8.

21. Starr & Collier 1989, 24.

22. Several scholars still employ the idea of the alleged dominance of the 'Rule of Law' as a major point of reference of their analysis of law in archaic and classical Greece. See e.g. Ostwald 1986; Lanni 2004; Gagarin 2004a; Sundahl 2005; Harris 2006a, especially 2006b. A recently published collective volume on Greek law begins with the editors' assertion that 'One of the most important Greek values was the ideal of the rule of law' (Harris & Rubinstein 2004, 1). Hölkeskamp 2000, 96 describes classical Athens as a 'Nomokratie'. Perhaps the most outspoken exponent of the view of law in the Greek world as autonomous, self-sustained and predominant is Sealey 1987 and 1994. He subscribes to Watson's (1985) evolutionary model of law and quotes with approval (1994, 22, n. 37) his assertion that 'law is largely autonomous and not shaped by societal needs'. For Sealey (1994, 1-24) change in the independent realm of 'the law' is effected thanks to the 'character of the nation' (which includes its legal tradition) and is primarily of a doctrinal type. Needless to say, such a thesis almost obliterates the impact of formal and lay legal actors in negotiating and producing law. For a critique of Sealey's thesis regarding the autonomy of law in ancient Greece see Todd & Millett 1990; Todd 2000. It should also be noted that legal theorists and historians of early and more recent periods of the modern world who subscribe to the notion of the 'Rule of Law' frequently, and often uncritically, ascribe the beginnings of this presumed notion to the ancient Greeks. See e.g. Turner 2000, 5.

23. With reference to the classical world see Frier 1985 who has persuasively argued that the view that law and the courts are independent from society is a Roman construct, originating with Cicero.

24. The extent to which this passage reflects Spartan or Athenian views (the latter recently argued by Forsdyke 2001, 341-50; Millender 2002) is a different matter which does not affect my present argument, since the passage in question at the very least strongly suggests that ideas regarding the importance of lawfulness and the 'rule of law' were in circulation in some parts of Greece during the fifth century. For Spartan perceptions of law in the archaic period see further Chapter IV.

25. See e.g. Kuper 1963; Ewick & Silbey 1998. Daily interaction and negotiation of the law in informal daily settings (e.g. public messes, gossip and conversation) are also suggested for a number of places in the Greek world such as Athens, Sparta and Crete. See further Chapter IV.

26. This is mostly due to the fact that Greek ideals of the 'rule of law', especially as expressed by Athenian authors of the classical period, coincide with modern western beliefs outlined above regarding the autonomy of the judiciary and the 'rule of law' as cornerstones of the modern western nation-state.

27. Similar conditions could have existed in earlier periods of Greek history but cannot be documented before Homer and Hesiod, i.e. the late eighth/early seventh centuries.

28. As indicated by sanctioning formulas of archaic laws which commonly refer to the *dēmos, polis* or the people of a city (usually designated by the ethnic) as the legislative authority. See further below and Chapter III.

29. See for instance the description of the trial, which is conducted in public, depicted on the shield of Achilles, *Il.* 18.497-508. In Hesiod, legal proceedings are also taking place in the *agora*, *Op.* 29-30. More examples are discussed in Chapters IV and V.

30. Various aspects of arbitration in archaic Greece are discussed throughout this book, especially in Chapters II and V. Hunter's (1994, 43-69) analysis of arbitration as a means of dispute resolution in classical Athens is the most perceptive and sensitive to the social and political context investigation of the topic in the scholarship on Greek law. Even though many features of classical Athenian arbitration as described by Hunter very possibly existed in the archaic period as well, the paucity of the evidence prevents us from reaching more detailed conclusions. For arbitration and dispute resolution in ancient Athens, see also Steinwenter 1925; Aicher-Hadler 1989; Scafuro 1997; Andriolo 1999.

31. For instance, as argued in Chapter V, the existence of a rule in Gortyn (*IC* IV 81 = *Nomima* II.47 = *IGT* 155) stipulating that, under certain circumstances, the litigant who has presented the biggest number of witnesses willing to swear an oath in court won the trial, must have often led to the active mobilization of informal networks of friends, relatives and neighbours as supporting witnesses in an attempt to prevail in court.

32. See the case of the Solonian *Heliaia* in Athens, Arist. *Pol*. 1273b35-1274a5; [Arist.] *Ath*. 7.3, 9.1; and the βουλὴ δημοσίη in Chios (ML 8 = *Nomima* I.62 = *IGT* 61), a body with judicial powers (see further Chapter IV).

33. As indicated by clauses in extant laws stipulating penalties for negligent judicial and other officials. See some examples in Koerner 1989; Harris 2006b, 305-8.

34. See Papakonstantinou 2004a and 2007a; also Chapter V.

35. For a useful summary of the debate with past bibliography see Gagarin 2005a.

36. Recent exponents of the 'unity' thesis include Biscardi 1982 and Sealey 1994 (on the basis of 'underlying ideas shared by many Greek cities', p. 67).

37. Finley 1986b (combining a 1951 book review of Pringsheim 1950 and a paper published in 1966). Finley was reacting to the appropriation, as it were, of the study of Greek law by scholars whose views were heavily influenced by principles of modern jurisprudence, especially by the ideas that Greek law was united by a common juristic mode of thought and that similar features of substantive law could be detected across the Greek world. Instead, Finley advocated that scholars should rather 'study Greek legal history as history' (Finley 1986b, 142) and 'seek such regularities or patterns as may be observable in their [i.e. the Greeks'] rules' (Finley 1986b, 143). It is interesting

to note that since the publication of Finley's article many legal historians, especially those working on classical Athens, have become more sensitive to the historical context of law. Nevertheless most of the same scholars, especially in the Anglo-Saxon world, still subscribe to Finley's 'disunity' thesis, even though the influence of the intellectual tradition that Finley was reacting against has been diminished, at least in the field of Greek law. For a more recent articulation of the 'disunity' thesis see Cohen 1989, 90-4, on which see Gagarin 2005a and my comments below.

38. See Triantaphyllopoulos 1968, 2: *tot iura quot civitates*.

39. Such polities numbered several hundred in the late archaic and classical periods. See Hansen and Nielsen 2004 and the other publications emanating from the Copenhagen Polis Centre.

40. See for instance a recent monograph on archaic law (Hölkeskamp 1999) in which 195 out of the total of 285 pages of text are dedicated to a meticulously detailed description of archaic laws classified by their *polis* of origin. In his 1999 monograph and in a series of articles (1992a; 1992b; 1994; 2000; 2005) Hölkeskamp articulates an instrumentalist picture of archaic law and argues for the existence of a single-enactment, ad hoc type of legislation in archaic Greece, as opposed to comprehensive codification. On this point, see my comments in Chapter III. For Hölkeskamp 1999, see also Osborne 2000 and Gagarin 2002.

41. Gagarin 2005a.

42. Chaniotis 2005. See also the studies in Chapter III, n. 8.

43. Foxhall & Lewis 1996b, 2-3; Thür 2007. See also Osborne 1997 who identifies responsibility and accountability of magistrates as a common feature of written laws from various archaic communities; and Harris 2006b who talks about 'The Spirit of Greek Laws'.

44. Nagy 1990, 48, n. 40 and passim. For Homer see also Nagy 1996a, 1996b and 1999. With particular reference to Hesiod, see Nagy 1992; for Theognis see Nagy 1985 and Irwin 2006, 68-9 (in contrast to Solon); and for the Homeric *Catalogue of Women*, fr. 43 see Rutherford 2005. Lately this thesis has been gaining support among ancient historians, e.g. Morris 2000, 157; Hölkeskamp 2002, 298-9. My agreement with this line of argument should not be taken as a denial of the existence of a historical Hesiod and Theognis. On the contrary, in the chapters that follow I assume them both to be real individuals who had close encounters with the legal system of their communities. But due to the panhellenic appeal of their poetry, I take the attitudes towards law they portray as reflective of widely shared values and ideas in archaic Greece.

45. Nagy 1999, 7. On oral tradition in relation to the creation of the Homeric epics see also Foley 1997.

46. For the significance and contexts of poetic performances in archaic Greece see in general Gentili 1988; Collins 2004.

47. On this topic see further Chapter II.

48. See e.g. Strasburger 1972; Calame 1995, 90-1; Bowie 2001 and, more generally, the remainder of the essays in Luraghi 2001; Grethlein 2006; see also Dewald & Marincola 1987 for further references. The parallels between Herodotus and archaic poetry very possibly extend to the issue of performance: many commentators find to a certain extent credible the ancient traditions that segments of Herodotus' *Histories* were at times orally performed for large audiences (although the exact circumstances and contexts of such performances are still a matter of debate). See e.g. Hartog 1988, 274-5 and passim, with references to the ancient testimonia; Dorati 2000, 31-3; Munson 2001, 266-73; R. Thomas 2000, 241-69 and passim.

49. See Hes. *Op*. 248-66; Solon fr. 4.15-16; 13.7-8; 13.29-31; Thgn. 132; 330. For a more extensive discussion of these passages see Chapters II and V.

50. 'Legal narratives' as used here appears to be cognate with the phrase 'legal behaviours' used in passing, but without any further elaboration, by Foxhall & Lewis 1996b, 3. To all intents and purposes, 'legal narrative' has the same analytical value as the concepts of 'legality' and 'legal consciousness' used by a number of scholars in cultural legal studies. 'Legality' can be defined (Ewick & Silbey 1998, 22-3; cf. also Silbey 2005) as the totality of 'meanings, sources of authorities and cultural practices that are commonly recognized as legal, regardless of who employs them ... Legality operates as both an interpretative framework and a set of resources with which and through which the social world (including the part known as the law) is constituted'. However, 'legality' is also widely used in contemporary empirical jurisprudence to denote a form of adherence to the tenets of the law, and its adoption in this book in the sense advocated by Ewick, Silbey and other scholars could have led to confusion among readers. Similarly, 'legal consciousness' (Sarat 1990; Ewick & Silbey 1992; Nielsen 2004) suggests an internalization and ultimately acceptance, on the part of social actors, of the effects of their interaction with the law. But in reality laymen often resist and manipulate the law to achieve their goals. For all these reasons it seemed appropriate to adopt for the purposes of this study the concept of 'legal narrative' as a semantically equivalent neologism in lieu of 'legality' and 'legal consciousness'. Finally, the concept of 'legal pluralism', arising primarily out of the tradition of legal anthropology, is also cognate with the concepts of legality and legal narratives discussed here. Similarly to scholars working in the cultural legal studies tradition, legal pluralists deny the existence of a sole dominant domain of state law and identify various co-existing normative orders that influence the perception and implementation of law. In this sense, legal pluralism is valuable in explaining some of the issues associated with the multiple legal authorities responsible for enacting and enforcing law in archaic Greece, identified and discussed especially in Chapter III. However, because of the focus on the dichotomy between state and

informal law and the abstraction often involved in their conception of legal 'fields' or 'orders' as interacting but largely independent and self-contained entities (e.g. Moore 1973 and 1978), many practitioners of legal pluralism often fail to appreciate the range, complexities and full impact of law in everyday life. By the same token it is fair to say that more recent developments within this tradition have resulted in more sophisticated analyses that are more sensitive to the social and historical impact of law and emphasize the overlapping nature of social fields (see for example Weisbrod 2002; Griffiths 2003). For the development and examples of legal pluralism and legal anthropology in general, see Gillissen 1971, especially Vanderlinden 1971; Moore 1973 and 1978; Nader 1969 and 2002; Sousa Santos 1985 and 1995; Griffiths 1986; Merry 1988; Vanderlinden 1989; Woodman 1998; von Benda-Beckmann 2002. For critiques of legal pluralism, see Starr & Collier 1989; Tamanaha 2000 and 2001.

51. Such as judges and lawmakers.

52. E.g. community members with only occasional or no direct interaction with the legal system.

53. Although legal institutions and enacted laws are only a part of a community's pool of legal narratives, archaic literary sources make clear that Greeks often made a distinction between formal sites of law and their own experiences. It will be helpful, therefore, to retain this distinction for the purposes of our analysis.

54. Such constantly mutating understandings of the law are often reflected in legal terminology. Once again archaic Greece provides a good case in point with various terms such as *nomos*, *thesmos*, *rhētra* articulating different ideological and practical nuances of law. On legal terminology in archaic Greece see the Appendix.

55. Silbey 2005, 332.

56. These comments should not be misconstrued as an assertion that a cultural legal approach is a panacea for all the problems associated with the study of archaic Greek law. It is rather offered as an alternative that, to my mind, can be revealing with regard to the daily manifestations of law and their significance. It is acknowledged that other studies focusing on other aspects of archaic law and from different perspectives can also be analytically valuable. Interaction and cross-fertilization between these different discourses within the field of Greek law should be encouraged and actively pursued.

II. Law and Justice in Early Archaic Greece

1. Herodotus largely paints a similar picture of strict control of political and legal resources by eastern monarchies and Greek tyrannies in the archaic period, with conditions in some parts of late archaic Greece developing into ἰσονομίη ('equality before the law'). The evidence provided by Herodotus will be more extensively discussed in Chapters II-V.

2. For the history of Greece during the archaic period in general see Jeffery 1976; Snodgrass 1980; Murray 1993; Osborne 1996; Morris 2000; Hall 2006.

3. On these issues see Desborough 1972; Whitley 1991a; Langdon 1997; Tandy 1997; C. Thomas & Conant 1999; Snodgrass 1980 and 2000; Morris 2000, all with extensive references to earlier literature.

4. For a discussion of law and legal terminology in the Mycenaean period see Frezza 1965; Calderone 1969; C. Thomas 1984; Apostolakis 1990, 102-48.

5. See Finley 1979, a revised edition of the 1954 original.

6. Tandy 1997, 9.

7. Heubeck 1974, 213-28; Janko 1982, especially 228-31 and 1998; Kirk 1962 and 1985; Latacz 1989; Powell 1991. The thesis that the Homeric epics were composed at a later stage during the seventh century (advocated chiefly by West 1988 and 1995) has not won many adherents.

8. For 'distancing effects' in the Homeric epics see Redfield 1975 and Morris 1986.

9. One might add that the social picture adumbrated by the epics is also in keeping with what one might roughly expect, on comparative grounds, to encounter in Greece during the early archaic period and given everything that has occurred in the preceding centuries (Mycenaean world, 'Dark Ages'). To be sure such analogies, albeit at times quite illuminating, must be used with extreme caution, especially since there is no universal evolutionary system of polity creation that could absolutely conform to and comprehensively account for the conditions of early archaic Greece or any other society before or since.

10. Over the last twenty years this view has emerged as the new orthodoxy among the majority of ancient historians who attempt a verdict on the date of the 'Homeric World' (i.e. the political, social and economic conditions depicted in the Homeric epics) and has been embraced even by scholars who approach the issue from fairly divergent methodological standpoints. See e.g. Qviller 1981; Morris 1986; Andreev 1988; Donlan 1985b and 1989; Rose 1988, 1992 and 1997; Ulf 1990; Whitley 1991b; van Wees 1992; Seaford 1994; Crielaard 1995b and 2002; Tandy 1997; Raaflaub 1991, 1997a, 1997b and 1998; Osborne 2004. For various historical aspects of the Homeric world see also Morris 1997; Donlan 1997; van Wees 1995 and 1997. I find particularly persuasive the suggestion that the Homeric epics reflect conditions in Greece contemporary to the date of written composition but also conditions 'within the time-span that could be covered by the audience's collective memory' (Raaflaub 1997a, 628). Cf. the more cautious assertion by Hölkeskamp 2002, 301 that 'the events and heroic action of the epic "foreground" could not have been set against a "background" of a world of Odysseus that had vanished half a dozen generations before, of social structures and institutions that were long and completely extinct, and of views and values that looked antiquated and downright outlandish to late 8th-century Greeks'. It should also be noted that many literary critics and archaeologists were and remain sceptical about the possibility of a historical Homeric world. See e.g. Snodgrass 1974, 118; Nagy

1996a, 20. Throughout this book I will be using the terms 'Homer' and 'Homeric world' (being aware of all the problems associated with the composition and the authorship of the *Iliad* and the *Odyssey*) to refer to the extant version of the epics and the various bards that contributed to their composition ('Homer') and the historical communities of early archaic Greece respectively ('Homeric world').

11. Dalby's (1995) argument that the Homeric epics were performed primarily in non-aristocratic contexts and are therefore imbued with a lower-class perspective of what life among the elite must have looked like is unconvincing on several grounds (e.g. his thesis that the heroes' lifestyle is too laconic to reflect real aristocratic conditions is undermined by the close correspondence between elite material culture as depicted in the Homeric epics and the archaeological record of early Iron Age Greece; see Crielaard 1995 and 2002; Morris 2000.) This is not to argue that the epics were performed exclusively in aristocratic contexts (for Homer's wider audiences see Louden 1997; see also the studies cited in n. 14 below); rather, I argue that what is of primary importance, for the purposes of this study at least, are the political/ideological implications of the world depicted by the epics. In relation to this issue, I am in agreement with those (see references in n. 14 below) who argue that the epics, while primarily promoting an aristocratic agenda, at the same time also partially articulated the concerns and worldview of the lower social orders.

12. Hesiod's *Works and Days* and *Theogony* are usually dated to the late eighth / early seventh century and are therefore near contemporaries to the *Iliad* and the *Odyssey*; see Janko 1982, 94-8; 229-31. These dates for Hesiod's poetry are followed by most scholars, e.g. Tandy & Neale 1996 and Tandy 1997, 13-14 with bibliography.

13. See e.g. Havelock 1978 (without endorsing Havelock's neat evolutionary model of the development of ideas and practices of justice in archaic and classical Greece; see the review by Lloyd-Jones 1982); Gentili 1984. More recently, the didactic and normative aspects of archaic poetry, and in particular of the Homeric epics, have been widely acknowledged. See e.g. Hölkeskamp 2002, 302-3 who emphasizes the 'normative dimension' of Homeric epic poetry arguing that it 'serves to assert values and views, rules and norms, and to evaluate ways of life, to praise or criticize modes of behaviour'. Cf. also Fredal 2006, 17 who argues that in archaic Greece 'to perform epic poetry, or any poetry, was to encourage an attitude, an *ēthos* and a *habitus* upon the viewing audience'.

14. Variants of this argument have been advanced by Donlan 1973; Raaflaub 1991, especially 247-50; Rose 1975, 1988, 1992 and 1997; Thalmann 1988; A. Edwards 1993; Seaford 1994; Olson 1995. Overall, the nature of the political communities portrayed in Homer remains a much disputed topic. See lately Hölkeskamp 2002 for a summary of the debate with bibliography.

15. Mostly expressed by θέμις and δίκη and their various derivatives (e.g. θεμιστεύω, δικάζω etc.). For the meaning of θέμις and its cognates in the Homeric epics see e.g. *Il*. 1.238; 2.73; 3.45; 5.761; 9.33; 11.807; 16.387; 20.4; *Od*. 9.112

and 215. For δίκη and its cognates see *Il*. 16.542; 18.508; *Od*. 3.244; 14.59; 24.255. See also Hirzel 1907; Ruipérez 1960; Gagarin 1974a; Dickie 1978; Havelock 1978, 135ff; Gschnitzer 1997; Bouvier 2002, 259-69.

16. Cf. also the description of the archetypal anti-society of the Cyclopes that opened Chapter I in which the poet emphasizes that their community lacked law (ἀθεμίστων, 'lawless' *Od*. 9.106) and communally agreed procedures of administration of justice (τοῖσιν δ' οὔτ' ἀγοραὶ βουληφόροι οὔτε θέμιστες… θεμιστεύει δὲ ἕκαστος παίδων ἠδ' ἀλόχων 'they lacked deliberative assemblies and established laws … and each one is lawgiver to his children and wives' *Od*. 9.112-15).

17. This point has been made convincingly by Saïd 1979 in connection with sympotic practices and the attitude towards Odysseus' *oikos* displayed by the suitors in the *Odyssey*. Moreover, the famous Thersites episode, *Il*. 2.211-77, where a member of the rank and file dares to speak against the ruling elite only to be severely reprimanded and beaten by Odysseus, ultimately serves as an affirmation of the *basileis*' comprehensive grip on political power. On this episode, see also n. 27 below.

18. Morris 1986, 125; cf. Raaflaub 1997b, 10-11 who, detecting an 'ideological distortion' in the Homeric epics, points out that 'the individuals playing the lead roles in the drama are of course the "heroes", that is, elite leaders, and much – though far from all – of the action is described from their perspective and with their values in mind' (p. 11). By the same token, in the same essay Raaflaub underscores non-elite elements in the Homeric epics, e.g. the importance of communal procedures of decision-making in the popular assemblies.

19. The importance of charismatic authority, an essentially Weberian notion, in archaic Greece has been recently explored by Hammer 2005.

20. As Forsdyke 2005a, 12 points out with reference to a wider context, 'in ancient Greece, political privilege was based on the claim to some combination of wealth, good birth, divine favor, and excellence (ἀρετή) in some socially recognized attainment, whether prowess in battle, political skill, or some other cultural practice.'

21. Although the earliest short Greek inscriptions in alphabetic script date to the eighth century, at present there is no evidence for the existence of texts of substantial length – such as laws – during the historical period (late ninth to early seventh centuries) largely reflected by the Homeric epics. For the emergence of alphabetic writing in early archaic Greece see in general Jeffery 1990; Powell 1991.

22. For oral and written law in archaic Greece see further Chapter III.

23. For the association of law and justice with the divine in Greek literature and thinking, including Homer and Hesiod, see in general Hirzel 1907; Ehrenberg 1921; Lloyd-Jones 1971, especially pp. 1-54; Saunders 1991, 33-52; McGlew 1993, 52-74 and passim; Allan 2006. Cf. also Ricl 1995 and Chaniotis 1997 and 2004 for manifestations of the same idea in the Hellenistic and Roman periods; and

the analysis of law in Homer and Hesiod in this chapter and Solon and Theognis in Chapter V. The same concept of divinely authorized law is also implied in the invocation to the gods in sanctioning formulas and the imprecations, along with the accompanying threats of divine punishment, frequently encountered in extant inscribed laws. There is a strong possibility that such references to the divine authority in the opening formulas of written laws might derive from prayer rituals in the citizen's assembly. See A. Chaniotis in *SEG* 52.856 with references. For sanctioning formulas see Chapter III. For imprecations in laws (with reference to inscriptions from the classical and Hellenistic periods) see Rubinstein forthcoming. Imprecations are frequently encountered in laws of the archaic period as well, e.g. *IG* IV 506.2 (= *Nomima* I.100 = *IGT* 29), Argos, early/mid-sixth century, τὰς ἀρὰς; *AEph* (1934-5), 140-5, 3-4 (= *Nomima* I.102 = *IGT* 50) Thessaly, Atrax?, c. 475 BC, κατάραι.

24. See also *Od.* 3.243-6 καὶ ἐρέσθαι Νέστορ᾽, ἐπεὶ περὶ οἶδε δίκας ἠδὲ φρόνιν ἄλλων· τρὶς γὰρ δή μίν φασιν ἀνάξασθαι γένε᾽ ἀνδρῶν· ὥς τέ μοι ἀθάνατος ἰνδάλλεται εἰσοράασθαι 'and ask Nestor, for beyond all others he knows justice and possesses wisdom; because three times, men say, has he been king for a generation of men, and like an immortal he seems to me to look upon'; and the scene of Minos dispensing justice in the underworld, *Od*. 11.568-71: ἔνθ᾽ ἦ τοι Μίνωα ἴδον, Διὸς ἀγλαὸν υἱόν, χρυσέον σκῆπτρον ἔχοντα, θεμιστεύοντα νέκυσσιν, ἥμενον, οἱ δέ μιν ἀμφὶ δίκας εἴροντο ἄνακτα, ἥμενοι ἑσταότες τε κατ᾽ εὐρυπυλὲς Ἄιδος δῶ 'there, you must know, I saw Minos, the glorious son of Zeus, golden sceptre in hand, giving judgment to the dead from his seat, while they sat and stood about the king in the wide-gated house of Hades and asked him for judgment'. Herodotus depicts a similar model of dispensing justice by eastern monarchs in the late archaic period. Besides the story of Deioces (Hdt. 1.96-8; see discussion below), see also the reference in Hdt. 1.14 to Midas' 'royal throne on which he used to sit and administer justice (ἐδίκαζε)' and the story of the Egyptian king Mycerinus (2.129), the most fair judge among among all Egyptian kings ('δίκας δέ σφι πάντων βασιλέων δικαιότατα κρίνειν'). Similarly to the story of Deioces, these stories might also partly reflect Greek perceptions of justice and in particular how Herodotus and his audiences would have envisaged justice to be administered in a monarchical context.

25. See also Homeric *Hymn to Demeter*, 103 θεμιστοπόλων βασιλήων, 'the kings who dispense justice'. For the possible Mycenaean origins of the Homeric references to administration of justice by single *basileus* (as opposed to a group of elders as on the shield of Achilles) see Cantarella 2002b, 194-7.

26. For the Homeric sceptre see in general Easterling 1989.

27. The most famous illustration of the exclusive aristocratic privilege of approved public speaking is the Thersites-Odysseus episode, *Il*. 2.211-77. On this passage see e.g. Rose 1988; Thalmann 1988; Lowry 1991 with earlier bibliography. Recently Marks 2005 has interpreted, unconvincingly in my opinion, this scene as an example of intra-elite competition.

28. To borrow M. Detienne's (1996) expression, elders and *basileis* were Masters of Truth (*maîtres de vérité*) when it came to the articulation of community norms and the administration of justice.

29. For kingship in ancient Greece see in general C. Thomas 1966, 1976 and 1978; Andreev 1979a; Drews 1983; Carlier 1984; Ruzé 1989; Barcelò 1993.

30. Gagarin 1986, 20; for this episode see now Meier, Patzek, Walter & Wiesehöfer 2004; Tourraix 2005.

31. It is interesting to note that according to the story, as reported by Herodotus (1.100), after his accession to the throne Deioces had recourse to a method of administering justice that lacked personal interaction between arbitrator and litigants: he would ask the litigants to send their pleas in writing (δίκας γράφοντες) and after examining the documents, he would adjudicate and send his judgment out.

32. Hdt. 6.57 also reports that the Spartan kings had judicial powers (δικάζειν) in cases concerning the rightful master of an unwedded heiress and in cases concerning public streets.

33. In an important study of law and the administration of justice in the Homeric world, Cantarella 1979 has convincingly argued that, when it came to the enforcement of rules and penalties, early archaic Greece was a 'shame-culture' and that value systems were inculcated primarily through poetic performances.

34. For the Antilochus-Menelaus dispute see Gagarin 1986, 36-8; Thür 1996 with earlier bibliography. Thür largely draws on this scene in constructing his theory that adjudication in archaic Greece relied heavily on the formulation of oaths of arbitration by judges and litigants.

35. For a discussion of oath-challenges in archaic and classical Greece see Gagarin 1997, especially 131-2 for the oath-challenge in the Menelaus-Antilochus dispute. With reference to classical Athens Mirhady 1991 has convincingly argued that an oath-challenge was a valid alternative method of dispute resolution to a courtroom lawsuit. I believe that the same argument can be made for archaic Greece as well.

36. See Thür 1970 and 1989b who also argues that Menelaus in this scene is not a simple litigant but actually assumes the role of a judge. Cf. Bouvier 2002, 256-9 on the significance of social status in dispute resolution. Moreover, there should be little doubt that, given his high social position, Antilochus as well as any other leader in the Greek camp could have potentially assumed a similar judicial role in comparable circumstances.

37. For 'decision by consensus' in Homer see Flaig 1994 and 1997. Flaig points out that in the Homeric epics the need for consensus frequently clashes with the competitive spirit that was highly valued by the Homeric elite. As a result, reaching consensus, either in interpersonal relationships or in decision-making settings, is usually problematic. However, it has to be pointed out that the funeral games of Patroclus, during which the Antilochus v. Menelaus standoff occurs, appear to be an exception to the attested discrepancy between the need for

compromise and the competitive drive. A spirit of reconciliation in the Achaean camp, most prominently between Achilles and Agamemnon, truly permeates the funeral games.

38. Cf. also the dispute between Hermes and Apollo over Apollo's cattle, *Hymn to Hermes*, 313-96 discussed in more detail below. Thanks to the arbitration of Zeus, this dispute also ends on a happy note. This is clearly the Homeric aristocratic ideal, although in practice the consequences of litigation were certainly more complex.

39. In general I agree with those who interpret the trial on the shield of Achilles as a voluntary submission to arbitration. See e.g. Gagarin 1986, 26ff. with earlier bibliography; contra Thür 1970 and 1996, who argues against the arbitration thesis and emphasizes instead the importance of oaths in settling disputes in archaic Greece (see Thür 1996, 61: 'in early Greece magistrates did not decide cases themselves. Rather they would formulate an oath and decide which of the litigants was to submit to taking it'). Even though judicial oaths certainly played a crucial part in settling disputes (especially as it is documented in the legal inscriptions from Crete. See Chapter V) and were certainly an option for dispute settlement in the Homeric world, as the Antilochus v. Menelaus story demonstrates, Thür's arguments against arbitration, based primarily on negative evidence and his interpretation of δικάζειν, are not convincing. The combined evidence of Homer and other early archaic sources (Hesiod, Homeric *Hymn to Hermes*) suggest that submission to arbitration and settlement by oath were two valid legal alternatives that did not function in exclusion to each other, but rather they co-existed and were open to litigants in early archaic Greece. The emphasis of some of the sources on only one of these legally binding courses of action (e.g. the oath in the Antilochus v. Menelaus dispute) should not therefore be seen, as the case appears to be with Thür, as discrediting the importance of other available methods of dispute resolution, such as arbitration by elders and out of court settlement. On the trial on the shield of Achilles see also Westbrook 1992 (on the possible interaction between early archaic Greek and Near Eastern legal systems see also Westbrook 2005; however, note also the objections by Canatrella 2005); van Effenterre & van Effenterre 1994; Wirbelauer 1996; Thür 1996; Cantarella 2002a; Fusai 2006, all with earlier bibliography. For various other aspects of law in Homer see also Cantarella 2002b (on which see Taddei 2004) and Cantarella 2004.

40. Roughly the same issue, but on a larger scale, was disputed between the *oikos* of Odysseus and the relatives of the suitors in *Od*. 24.413-548, discussed above. See also next note.

41. *Il*. 9.632-6 describes a homicide dispute settlement effected through the payment of blood money: 'a man accepts recompense (ποινὴν) even from the killer of his brother, or for his dead son; and the killer remains in his own community if he pays a great price (πόλλ' ἀποτίσας), and the kinsman's heart and spirit are restrained by receiving the compensation (ποινὴν)'. It was failure to

accept part of the payment (perhaps because of a disagreement on the amount due) that is suggested as the cause of the lawsuit in *Il*. 18.497-508.

42. The meaning of ἴστωρ in Hesiod, *Op*. 792. See also next note.

43. Apostolakis 1990, 77 suggests that the ἴστωρ was simply the official that convened the court of elders. This goes against *Il*. 23.486 where Agamemnon is suggested by Idomeneus as ἴστωρ in his dispute with Ajax, son of Oileus, over the issue of who was leading the chariot-race in the funeral games of Patroclus. The shield of Achilles trial and *Il.* 23.486 taken in conjunction suggest that the ἴστωρ played a more substantial role in deciding the outcome of an arbitration. Another interpretation is provided by a scholiast on *Il.* 23.486 who suggests that ἴστωρ can be the witness. See Erbse 1969-88, vol. V, p. 443: ἴστορα, ὅτι ἀντὶ τοῦ μάρτυρα, οἷον συνθηκοφύλακα. See also Carawan 1998, 62. This interpretation of ἴστορες as witnesses finds some confirmation in the prayer formula reported in *Il*. 19.258 ἴστω νῦν Ζεὺς πρῶτα … Γῆ τε καὶ Ἥλιος καὶ Ἐρινύες 'let Zeus be my witness first … and Earth and Sun and the Erinyes'; and in some late documents, e.g. a manumission decree of the Roman period from Thespiae, *IG* VII 1779. Based on *Il*. 19, 258 and comparative linguistic evidence Benveniste 1969, v. II, 173-5 suggests that *istōr* is the 'one who sees', 'the witness'. But the same author also acknowledges that this interpretation is inadequate in explaining the reference to the *istōr* in *Il*. 18.501, for which he suggests 'arbiter'. Cantarella 2002b, 198 argues that, if in book 9 of the *Iliad* Achilles had accepted the gifts offered by Agamemenon through the delegation of prominent Achaeans including Odysseus, then the latter would have assumed the role of ἴστωρ in any future disputes concerning the ownership of these gifts. For more references to scholia regarding the Homeric ἴστωρ see Apostolakis 1990, 76; see also Wolff 1961, 11, n. 19. On the meaning of *istōr* see also Edwards 1991, 216-17; Fusai 2006 (a monograph that appeared too late for its arguments to be fully incorporated in this book). The *Iliad* also mentions a δικάσπολον, another term to denote the judge/arbitrator. See *Il*. 1.238; *Od*. 11.186 and Chantraine 1968, vol. I, p. 283.

44. *Il*. 18.507-8, κεῖτο δ᾽ ἄρ᾽ ἐν μέσσοισι δύω χρυσοῖο τάλαντα, τῷ δόμεν ὃς μετὰ τοῖσι δίκην ἰθύντατα εἴποι. For the two talents of gold as the fee for the elder who pronounced the most acceptable verdict see Gagarin 1986, 31. However, Cantarella 2002b argues that the two talents of gold were collected by the litigant who won the lawsuit. With reference to the Hermes v. Apollo dispute in the Homeric *Hymn to Hermes*, verse 324 reads κεῖθι γὰρ ἀμφότεροι δίκης κατέκειτο τάλαντα. This has been variously interpreted as a reference to the court fee, comparable to *Il*. 18.507-8, collected by the judges (Wolff 1946, 43; Humphreys 1983, 232, n. 3) or as a generic reference to the 'scales of justice' (Gagarin 1986, 40).

45. Besides the trial on the shield of Achilles see also *Il*. 11.807-8 where the makeshift *agora* in front of the ships of the Cephallenians led by Odysseus is identified as the location where justice is administered (ἵνα σφ᾽ ἀγορή τε θέμις τε ἦην 'where was their place of assembly and the place of judgment'); *Il.* 16.387-8,

describing the evils that befall to men as a result of crooked justice carried out in the *agora* (οἳ βίῃ εἰν ἀγορῇ σκολιὰς κρίνωσι θέμιστας, ἐκ δὲ δίκην ἐλάσωσι 'men who by violence give crooked judgments in the place of assembly and drive justice out'); and *Od.* 12.439-40 for the image of a judge dispensing justice in the *agora* until supper time (ἦμος δ' ἐπὶ δόρπον ἀνὴρ ἀγορῆθεν ἀνέστη κρίνων νείκεα πολλὰ δικαζομένων αἰζηῶν 'at the hour when a man rises from the assembly for his supper, one that decides the many quarrels of young men that seek judgment'). For public judicial proceedings in archaic Greece, see further below regarding Hesiod and Chapter IV. The importance of public deliberations in the Greek justice systems was emphasized by Havelock 1978, 133 who pointed out that 'Justice can be applied only with the participation of the agora functioning as a forum for rhetoric addressed to the issues that have arisen'. Cf. the remarks by Humphreys 1983, 230-1. On the public and oral aspects of early archaic adjudication see most recently Hölkeskamp 2002, 308-18 (for which see next note) and Gagarin 2003, 60-4.

46. The public nature of adjudication in the Homeric epics has recently been emphasized by Hölkeskamp 2002, especially 314-18. Although in agreement with Hölkeskamp's arguments regarding the importance of oratory as well as his assertion that in the Homeric epics 'the administration of justice is a collective concern' (p. 316), I find his insistence on reaching a broad consensus as 'the only basis for an at least relative binding force of *dikai* and *boulai* of any kind' (p. 317) as only partly convincing. There is no doubt that, at least as far as judicial verdicts were concerned, a certain degree of acceptance and conformity to the decisions on the part of the litigants and the public were expected. Yet on the other hand, the alleged divine authority of the judiciary/political elites that administered justice must have played a major role in rendering these verdicts acceptable and enforceable. Hence litigants could conform to the judicial decisions of the *gerontes* and *basileis* without necessarily entirely consenting to them. Hesiod provides a good near-contemporary example.

47. Besides litigation, the significance of rhetorical performances is also attested in the Homeric epics in relation to other forms of public deliberation, including politics. See Schofield 1986; Hölkeskamp 2002.

48. E.g. *Il*. 2.48-440; *Od*. 2.1-259. For political assemblies and public speaking in Homer see Andreev 1979b; Ruzé 1983 and 1984; Bannert 1987; Martin 1989; Mackie 1996, 15-31; Raaflaub 1997b; Flaig 1997; Hölkeskamp 1997; Hammer 2005, especially 113-17; Raaflaub & Wallace 2007, 24-32.

49. For the populace in the Homeric epics see Haubold 2000; Hammer 2005, 107-17.

50. Cf. also *Od.* 15.468 where the assembly is alluded to as the 'people's place of speech' δήμοιό τε φῆμιν.

51. Nader 2002, 216.

52. For Hesiod in general see Millett 1984; Clay 1992; Tandy & Neal 1996; Tandy 1997, 203-27 and passim; Hanson 1999, 89-124; Morris 2000, 163-8 and

passim; Edwards 2004. On law and justice in Hesiod Gagarin 1973, 1974b and 1992 are illuminating in many respects and still useful. See also Walcot 1963; Donlan 1980, 26-34; Erbse 1993.

53. For law and justice as a divine domain in archaic thought and literature, see the bibliography cited in n. 23 above. For *dikē* in Hesiod see Ehrenberg 1921, 62-83; Gagarin 1973 and 1974; Dickie 1978; Aubriot 1984; Erler 1987; De Sensi 1990; Fisher 1992, 185-200; Beall 2005. Cf. Ehrenberg 1921, 54-62; Benveniste 1969, vol. II, 107-10; Gschnitzer 1997; cf. Lévy 1998 for *dikē* in the Homeric epics. The idea that law is divinely inspired is not restricted to the archaic period, but is encountered until the end of antiquity, and indeed beyond. For instance, a lucid articulation of the Divine Justice concept and of law as a transcendent, absolute authority is to be found in the late Hellenistic *Orphic Hymn* LXIV which begins Ἀθανάτων καλέω καὶ θνητῶν ἁγνὸν ἄνακτα, οὐράνιον Νόμον. However see Versnel 2002 who argues that the belief in divine retribution to injustice was less widespread during the classical period.

54. For this passage see Solmsen 1954; Roth 1976; Gagarin 1992; Brillante 1994; Stoddart 2003.

55. Cf. also *Th*. 901-6 where Justice (Δίκη) is described as daughter of Zeus and Themis and a sister, among others, of Order (Εὐνομίην) and Peace (Εἰρήνην).

56. By the same token, peace and prosperity are bestowed upon the cities of the kings who uphold justice, e.g. *Op*. 225-37; the same idea is also encountered in Homer, *Od*. 19.109-14.

57. For the concept of 'reification of justice' see Berger & Pullberg 1965; Ewick & Silbey 1998, 77-82.

58. For a detailed discussion of law and the divine in Solon and Theognis see Chapter V.

59. Cf. Hdt. 8.106 referring to the gods' 'just law' (νόμῳ δικαίῳ).

60. See for instance the tradition (Plu. *Lyc.* 6.1) that Lycurgus' laws were ratified by the Delphic oracle. Cf. also Arist. fr. 548 Rose, according to which the Locrians were advised by the oracle to enact new laws. As a result Zaleucus, a shepherd at the time, proposed many excellent laws claiming that Athena suggested them when she appeared in his sleep.

61. For examples and discussion of judicial *defixiones* (including curses and prayers) see Jeffery 1955; Faraone 1991 and 2002; Versnel 1991 and 2002; Jordan 1985 and 2000**;** Chaniotis 1992 and 2004; Gager 1992, 116-50.

62. Judicial curses could also have been orally delivered or written on perishable materials. Indeed some of the extant judicial *defixiones* survive on papyrus, e.g. *PGM* XL.

63. For examples of late archaic judicial *defixiones* see e.g Jordan 1985, nos 95 and 99. See also Ottone 1992, 45-50.

64. I discuss judicial curses further in Chapter V.

65. As suggested e.g. by Faraone 1985, 151-2. Faraone argued that in principle judicial *defixiones* were written before the outcome of a trial was known and aimed

at interfering with the adversary's cognitive abilities and performance in court. Although this argument is sensible, by the same token it does not weaken the possibility that some of the judicial *defixiones*, especially prayers, were written after the trial concerned. Cf. Ottone 1992, 44 who opts for the period of the ἀνάκρισις for the writing and dedication of judicial *defixiones*.

66. See Costabile 2001, 200-1. For judicial curses see Chapter V.

67. Mostly gods with chthonic associations, see Versnel 1991, 64, including the relatively obscure Πραξιδίκαι ('Enforcers of Justice').

68. The importance of straight justice (as opposed to the crooked justice encountered in Askra) is suggested by the exhortation to Zeus and the audience in the preamble of the *Works and Days*, 9-10 δίκῃ δ' ἴθυνε θέμιστας τύνη 'make straight judgments with rightousness'.

69. Besides the Hesiod v. Perses dispute and the evidence provided by Homer and the Apollo v. Hermes dispute in the Homeric *Hymn to Hermes*, discussed above, the pseudo-Hesiodic *Catalogue of Women*, fr. 43a.31-57 further illustrates dispute resolution procedures. According to the story, Sisyphus has paid, on behalf of his son, great wedding gifts for Aithon's daughter, Mestra. But after she has been taken away, the girl escapes and returns to her father's house. In consequence, 'strife and dispute broke out between Sisyphus and Aithon over the slim-ankled girl' ἔρις καὶ ν[εῖκος] ἐτ[ύχθη] Σισύφωι ἠδ' Αἴθωνι τανισφύρο[υ εἵ]νεκα [κούρης], 36-7. No mortal was able to judge the case and accordingly the litigants referred the dispute to a goddess (which one is not clear due to the fragmentary state of the papyrus containing the fragment). Mythological elements aside, this passage also corroborates the main features of voluntary submission to arbitration as well as the popularity of the procedure in settling disputes. The *Catalogue of Women* has been dated anywhere between the early seventh (Janko 1982, 85-7) and the sixth century BC (West 1985, 130-7). For fr. 43a see Gagarin 1986, 35-6; Steinrück 1994; Rutherford 2005.

70. A good discussion in Gagarin 1974b.

71. A scholion on *Op*. 37-8 (Pertusi 1955) points out that βασιλῆας δὲ νῦν τοὺς δικαστὰς καὶ τοὺς ἄρχοντας· οὕτως γὰρ αὐτοὺς ἐκάλουν οἱ παλαιοί, ὡς Ὅμηρος.

72. Although there is an allusion to perjury (not necessarily in connection with Hesiod's trial) in *Op*. 282-4: ὅς δέ κε μαρτυρίῃσι ἑκὼν ἐπίορκον ὀμόσσας ψεύσεται, ἐν δὲ δίκην βλάψας νήκεστον ἀασθῇ, τοῦ δέ τ' ἀμαυροτέρη γενεὴ μετόπισθεν λέλειπται 'but whoever deliberately lies in his witness and perjures himself and so hurts Justice and sins beyond repair, his generation is left obscure thereafter'. On perjury in archaic Greece, see further Chapter V. Bribery (real or perceived) in Greek legal contexts is understudied, although for classical Athens see now Hashiba 2006.

73. In this sense, attendance of lawsuits is depicted by Hesiod as a leisure activity, comparable to athletic contests (*Th*. 435-8), community feasts (*Op.* 722-3) or simply hanging out at the smithy or the *leschē* (*Op.* 493).

74. Hesiod's own comments (*Op*. 342-51) on the importance of strong ties of solidarity with one's friends and neighbours also suggest the importance of informal social networks in his community.

75. On the theme of greed in Hesiod see also Balot 2001, 70-3.

76. In the context of the dispute between Hermes and Apollo in the Homeric *Hymn to Hermes* an initial attempt is also made by the two litigants (Apollo by trying to persuade Hermes to return the stolen cattle; Hermes by proposing an oath-challenge as means of ending the dispute immediately) to settle the dispute without resorting to arbitration.

III. The Enactment of Law

1. Even though almost all scholars would agree that the use of writing to inscribe legal regulations in archaic Greece influenced greatly the way law was perceived and represented (although exactly how remains very much in contention), very few would deny the existence of law before the advent of writing. A major exception is Gagarin (mostly 1986; for orality and written law see also 2001b; 2003) who, relying heavily on Hart 1994 (originally published in 1961), views writing as a necessary prerequisite for the emergence of 'recognized legal rules' in a 'fully "legal" stage of development' (1986, 8; cf. 8-10 and passim). In this view, norms that pre-existed the earlier written statutes of archaic Greece do not come under the category of 'law', which formally emerges with the use of writing. For instance, Gagarin 1986, 11 refers to Ajax's description (*Il*. 9.632-6) of homicide settlement after the acceptance of blood-money and, even though complications regarding the same rule had obviously triggered the dispute that led to the trial depicted on the shield of Achilles (*Il*. 18.497-508, see discussion in Chapter II), proceeds to describe Ajax's utterance as a generalization instead of law because 'it is not cited by Ajax as having any special authority and Achilles is not persuaded to follow it'. However, on the basis of the evidence provided by the trial depicted in *Il*. 18.497-508, it could be argued that Ajax describes a widely accepted norm with legally binding force which could have been variously interpreted (as the trial on the shield of Achilles suggests) and/or resisted by members of early archaic communities. Thus *Il*. 9.632-6 is testimony to the conceptual malleability of law in the Homeric world, not of the non-existence of orally transmitted norms with legal force. Furthermore, in his 1986 monograph (as well as in some of his most recent scholarly efforts dealing with the issues of writing and archaic law e.g. Gagarin 2001b and 2003), Gagarin does not extensively address the issues of literacy and accessibility of written laws by the members of archaic communities, and appears to assume that once ordinances became fixed in written form they were easily accessible by all interested parties. Such a view does not correspond well with the overall picture of only limited direct accessibility of written law by ordinary citizens as a result of relatively low 'legal' literacy levels (see Chapter

IV, nn. 20, 21, 22), which, I believe, is largely suggested by the extant written laws themselves and other archaic evidence. This inference is valid mostly for Crete, but the scarce evidence from other parts of archaic Greece does not undermine it. Moreover, it should be pointed at that, as is argued in this chapter, this lack of direct contact with written law did not prevent most citizens of archaic communities from becoming acquainted with legal norms and procedures in other ways. For a more detailed critique of Gagarin's written law thesis see Cohen 1989, 90-4; R. Thomas 1992, 1995, 2005 and Burchfiel 1994. For aspects of literacy, orality and law in archaic Greece see also C. Thomas 1977 and 1994; Piccirilli 1981; Triantaphyllopoulos 1983; Camassa 1988; Gehrke 1998 and 2000; Svenbro 1993; Robb 1994; Steiner 1994; R. Thomas 1992, 1995 and 2005; Sickinger 1999; Ruzé 2001; Hölkeskamp 1994, 2000 and 2005; Papakonstantinou 2002; Gagarin 2001b, 2003 and 2004b; Arnaoutoglou 2004; Ellinger 2005; Faraguna 2007. Focusing on classical Athens, Sickinger 2002 emphasizes the importance of both oral and written practices in lawmaking procedures; although the evidence for the interaction of literacy and orality in lawmaking processes in archaic Greece (as opposed to the reception of law in the courts and everyday life) is scarce, one could reasonably assume such an interaction to be even more fundamental (given the novelty of the medium of writing) in legislative procedures in the historical communities of archaic Greece.

2. On the monumental aspects of archaic Greek written law see Hölkeskamp 2000 and 2005. For the monumentality of archaic and early Classical laws from Crete see more recently Whitley 2005, but cf. my comments in Papakonstantinou 2007b.

3. On the topic of literacy and law in archaic Greece see further Chapter IV.

4. For some examples see H. Kuper 1963; Nader 1969; Weyrauch 2001. The case of medieval Iceland is especially well documented, see Jóhanneson 1974, 35-93; Hastrup 1985, 205-22. For aspects of oral and written law in medieval Iceland see also Miller 1990.

5. Although small communities could also be very prolific in their production of written ordinances, as the example of Dreros in eastern Crete demonstrates. On the written enactments from Dreros see further below. Yet by the same token archaic Crete seems to be a special case, with more extant written legislation than any other part of Greece.

6. As argued in Chapter II, the poetry of Hesiod reflects such a state of contestation of law and justice, but it falls short of suggesting that the people could take matters in their own hands and overhaul lawmaking and adjudication procedures.

7. The *kosmoi* as highest executive magistrates are attested in many archaic and classical Cretan communities. The term *kosmos* in the singular can sometimes have a collective meaning and denote the entire annually elected board of *kosmoi*; it is quite possible that this is the case in the reference to the *kosmos* in the last clause of the enactment from Dreros.

8. One should not forget that strictly speaking the text is revealing of conditions in Dreros. But given the similarities in institutions and legal terminology (for which see Martínez Fernández 1997) across archaic and classical Crete (see Chaniotis 2005) and the parallels to clauses in the enactment from Dreros encountered in ordinances from other parts of Crete (e.g. the ban on iteration of office for various magistrates in Gortyn, see further below), one is entitled to compare cautiously legal practices and perceptions attested in the archaic inscriptions from different Cretan communities. It should be noted that the evaluation of the discrepancies and similarities detected in the literary and epigraphic record concerning the political and social structure of the communities of archaic and classical Crete is a controversial topic. Recently see Chaniotis 2005 and Link 2002; contra Perlman 1992 and 2005.

9. From the drawing and the photograph of the stone (available in Demargne & van Effenterre 1937, 334; Jefferey 1990, plate 59; Osborne 1996, 186), it is clear that θιοσολόιον is inserted, almost certainly after the main body of the law has been inscribed, at the far right of the stone squeezed between the first and second line. It is written retrograde, similar to the first and contrary to the second line, and given the layout of the text at the beginning of the decree, epigraphically the most plausible explanation is that θιοσολόιον was intended for the sanctioning formula and that for some reason (e.g. it was decided by the enacting authorities to incorporate it into the main body of the decree, and thus add it on the stone, slightly later, after the remainder of the text had been inscribed) it was inserted in its final position because of lack of space and due to a visible crack in the top right corner of the stone, which prevented the scribe from properly chiselling it in its intended place. I take θιοσολόιον to be some type of a invocation to the gods (perhaps related to the endorsement/validity of the decree in the eyes of the citizens of Dreros? Cf. also the fact that the inscription was displayed on the walls or in the vicinity of the temple of Apollo Delphinios. Forssman 2002 interprets θιοσολόιον as a benediction) or an abbreviated binding curse of the type frequently encountered in laws and decrees from various parts of archaic and classical Greece (see Rubinstein forthcoming for examples; also Chapter II, n. 23). For an interpretation of θιοσολόιον as a curse see Pounder 1984 (without however endorsing the links with Near Eastern practices that he detects); for the earliest decree from Dreros in general see the extensive bibliography in *Nomima* I, pp. 307-9, to which add now Hölkeskamp 1999, 87-95.

10. To be sure, the exact meaning and composition of the *polis* cannot be taken for granted, especially in the context of the seventh century BC (see further below). However, in the case of the earliest decree from Dreros, the explicit reference to other institutional bodies and boards of officials (*kosmoi*, *damioi*, *ikati* of the *polis*) that are clearly subdivisions of the citizenry implies that the *polis* was a rather more inclusive entity. Hence it is reasonable to assume that in this instance *polis* quite possibly denotes the entire citizenry. For the *polis* in archaic Greece see now Hansen & Nielsen 2004; Hansen 2006 with earlier bibliography.

11. It should be noted that, due to the fragmentary nature of the inscription, there is no universal agreement as to whether the reference to the ἀλιαίαν is connected with the implied deliberative powers of the *dēmos*. Hence for instance van Effenterre & Ruzé, *Nomima* I, p. 294 translate 'comme le peuple aura décidé. L'assemblée se tiendra (?) …'. Even if such an interpretation is accurate, at the very least the extant fragment suggests a deliberative authority of the *dēmos* and the existence of an assembly. On this enactment from Tiryns, see further Chapter IV.

12. Other examples include *IG* I^3 1 (= *Nomima* I.6), Athens, c. 510-500, ἔδοχσεν τ̃ο δέ[μοι; *IG* I^3 4.B.26 (= *Nomima* I.96), Athens, 485/4, ταῦτ᾽ ἔδοχσεν τ̃ο δέ[μοι (cf. also same inscription, A.14); *IC* IV 43.B.a (= *Nomima* I.47 = *IGT* 132), Gortyn, early fifth century, Θιοί· τὰν ἐ[ν] Κησκόρα καὶ τὰν ἐμ Πάλαι πυταλιὰν ἔ‹ε›δοκαν ἀ πόλις πυτεῦσαι; *IC* IV 78 (= *Nomima* I.16 = *IGT* 153), Gortyn, early fifth century, Τάδ᾽ ἔϝαδε τοῖς Γορτυνίοις πσαπίδονσ[ι--]; *BCH* 77 (1953), 395 (= *Nomima* I.35), Argos, 475-450, ᾽Αλιαίαι ἔδοξξε; *AEph* (1934-5), 140-5 (= *Nomima* I.102 = *IGT* 50), Thessaly, Atrax?, c. 475, Θεθμὸς τοῖ δάμοι. Other archaic documents suggest the deliberative and/or legislative power of the citizenry indirectly, e.g. *IvO* 11.7 (= *Nomima* I.21), a ϝράτρα of the Chaladrians (possibly a small community in Elis) of the late sixth to early fifth century, contains a clause about a possible future decision of the *damos* (αἰ μὲ δάμοι δοκέοι); cf. *IvO* 13.7-8 (= *Nomima* I.36), discovered at Olympia, dating to the early/mid-fifth century, in relation to allowing an individual to access the hearth of a sanctuary, a clause requires the assent of the *damos* [… αἴ κα] δόξε καὶ τοῖ δάμοι.

13. See Ruzé 1997 passim. For some examples of the meaning of *polis* in archaic and classical sources see Flensted-Jensen, Hansen & Nielsen 2000; Hansen 2000; Hansen & Nielsen 2004; Hansen 2006. For *dēmos* see Donlan 1970. For an overview of the use of terms such as *polis*, *dēmos*, *agora*, *boulē* in Cretan inscriptions see Bile 1988, 336-41. The reference to the *boulē* and the *dēmos*, so common in classical Athenian decrees, is almost certainly to be restored in a late archaic (c. 500) ordinance from Athens *IG* I^3 5, [ἔδοχσε]ν [τεῖ βολεῖ] καὶ [τ]οῖ δέμοι, and a early classical decree from Eretria *IG* XII suppl. 549.1-4 (= *Nomima* I.39), Eretria, c. 475 BC, [ἔδοξεν τεῖ βολε]ι καὶ τοῖ δ[έμοι | π]αραγενομέ[νοι] | κ̣υρίοι. These sanctioning formulas would suggest at the very least a two-stage decision-making procedure in place, with the *bolē* quite plausibly exercising probouleutic authority and the citizenry possessing deliberative, and perhaps legislative, powers.

14. Similar to the oath that 'all' (πάντες) had sworn in Athens in observance of the laws of Solon ([Arist.] *Ath.* 7.1; cf. Plu. *Sol*. 25.2). With reference to the decree from Dreros, scholars (e.g. Demargne & van Effenterre 1937, 346; Ehrenberg 1943; Hölkeskamp 1999, 92) have usually understood this oath either as a ratification of the contents of the decree by the *kosmoi*, the *damioi* and the *ikati* or as a pledge on their part to obey and enforce it. Gagarin 1986, 82-4, has argued

that, since the main body of the decree concerns itself with the tenure and responsibilities of the *kosmoi*, the oath in the last clause must be an oath to be sworn by the above mentioned officials at the trial resulting from the violation of the contents of the law by an ex-*kosmos*. This interpretation is unlikely, among other reasons, on epigraphic grounds: the oath provision is written retrograde, which is also the direction of the previous line. If the oath provision was envisaged as a continuation of the previous clause on the powers of the *kosmoi*, one would have expected the oath clause to continue boustrophedon (in this case left to right), as the main body of the decree is written. The discontinuous direction of writing indicates that, although the oath clause was undoubtedly in some way related to the main body of the document, it was also perceived as semantically divergent and not a direct continuation of it. Therefore the arrangement on the stone very probably suggests that the oath provision was a rider added to the inscription sometime after (but not necessarily considerably later) the main body of the decree was inscribed, and that it did not directly refer to the preceding clauses which outline the responsibilities and penalties to be imposed on negligent *kosmoi*. The reason for the later addition of the rider is of course unknown, but it might be related to possible conditions of internal aristocratic struggle for power in archaic Dreros (for political conflict in archaic Crete in general see Gehrke 1997; Papakonstantinou 2002, especially 146-50; Mandalaki 2004), and more specifically it could be attributed to an attempt by some political factions to ensure the enforcement of the contents of the decree and curtail the power and abuses of the office of the *kosmos* by their opponents. Finally, it should be noted that it would have been quite unusual, if not unprecedented, for all these different institutional bodies mentioned in the oath rider to be present and swear at the trial of an ex-*kosmos* who had violated the decree in question, as Gagarin suggests. On the contrary, a ratification of the document by oath, possibly annually, by these bodies would not be unlikely in the light of Greek practices (e.g. the oaths of ephors in Sparta), especially if the decree was considered of vital importance for the social and political stability of the community. On the oath in the seventh-century decree from Dreros see now Forssman 2002 who interprets ὀμόται as third person indicative future ('they shall take an oath'), an interpretation that is in keeping with the arguments presented here.

15. See the bibliography in n. 8 of this chapter.

16. For arguments in favour of the historicity of the Solonian Council of Four Hundred see Rhodes 1993, 153, Rhodes 2006 and de Ste. Croix 2004, 83-9. Recently van Wees 2006 has identified the establishment of the council of the Four Hundred as a measure aimed at opening up participation in government to a wider number of the elites. For a more sustained discussion of *probouleusis* in archaic and classical Greece see Andrewes 1954; Forrest 1967; De Laix 1973; Sealey 1969.

17. Based on the extant text of the sixth-century law from Chios, some scholars have maintained that the βολὴ δημοσίη had probouleutic responsibilities with regard to the preparation of the appeal cases that were ultimately adjudicated by

the assembly. See Wade-Gery 1958, 198-9; Jeffery 1956, 164; Robinson 1997, 97; Hölkeskamp 1999, 83. However, it is also plausible, as others have argued (e.g. Gagarin 1986, 90-1) that the βολὴ δημοσίη itself served as a court of appeals. Moreover, and besides these judicial responsibilities, it is likely that the Chian *bolē* also had political and legislative probouleutic powers and that the provision that the *bolē* will concern itself with the other affairs of the *dēmos* (τὰ τ᾽ ἄλ[λα] πρησσέτω τὰ δήμο) might be a reference to its political probouleutic functions. But on the present state of the evidence this assertion must remain a plausible conjecture.

18. For the archaic temple of Apollo in Dreros see Marinatos 1936; Beyer 1976; D'Acunto 2002-3. For conditions in Crete during the same period as documented by archaeology see Morris 1998, 59-68; Kotsonas 2002; Sjörgen 2003.

19. *BCH* 70 (1946), 590, no. 2 (= *Nomima* I.64 = *IGT* 91), Dreros, late seventh century. Much depends on the meaning of διαλήσασι which is usually translated 'in consultation with' or 'after the deliberation of' the tribes, thereby implying a one- or two-stage process of enactment. If this interpretation of διαλήσασι is accurate, then this sanctioning formula has wider implications and raises further questions: for instance, since the total sum of the membership of the tribes presumably made up the entire citizen population of Dreros, wouldn't the reference to both tribes and the *polis* in the sanctioning formula be redundant? Given our almost total ignorance regarding the history of Dreros in the seventh century, one can only speculate about the conditions that led to the sanctioning formula in question. One possibility is that πόλι ἔϝαδε διαλήσασι πυλᾶσι implies that the popular assembly was organized along tribal lines (see e.g. Ruzé 1983, 303-4, arguing that the same formula suggests that there was a meeting of the assembly at which the tribes voted separately; accepted as possible by Rhodes 1997, 309). A parallel to the situation in Dreros is perhaps Chios, where there is more solid evidence for decision-making powers of tribal subdivisions of the population: see the decree enacted by the tribe or *phratria* of *Kaukaseis* in Chios, c. third quarter of the fifth century BC (*SGDI* 5654 = Forrest 1960, 187-8: Καυ]κασέων γνώμη) and the people's council attested during the archaic period (βολὴ δημοσίη, ML 8 = *Nomima* I.62 = *IGT* 61.C.2-3 and 5-6, early/mid-sixth century BC; for a more detailed discussion of this law see Chapter IV) which consisted of fifty representatives from each tribe. See also the opening formula of the Spensithios contract *Kadmos* 9 (1970), 118 (= *SEG* 27.631 = *Nomima* I.22), discussed below. It is plausible therefore that similar arrangements regarding the representation of tribes existed also in the popular assembly and other deliberative bodies in seventh-century Dreros and, if so, they are alluded to in the sanctioning formula πόλι ἔϝαδε διαλήσασι πυλᾶσι. For tribes and political power in archaic Greece in general see Ruzé 1983 and Roussel 1976, passim.

20. *BCH* 70 (1946), 597, no. 3 (= *Nomima* I.68 = *IGT* 92). For an alternative, and in my view unconvincing, reading of the opening clause of this enactment, see *Nomima* II.89.

21. *BCH* 70 (1946), 600, no. 4 (= *Nomima* I.27 = *IGT* 93), Dreros, late seventh/early sixth century, ἔϝαδε τοῖς ἰθυντᾶ[σι]?. Other restorations and interpretations have been suggested, see e.g. *Nomima* I.120-1; Rhodes 1997, 310. Despite the uncertainty surrounding the reading τοῖς ἰθυντᾶ[σι], the verb ἔϝαδε clearly suggests some decision-making powers, including quite possibly the power to generate civic enactments.

22. This inference, applied to a wider part of archaic Greece in the remainder of the present chapter, echoes the theories of multiple legal levels and social fields advanced by legal pluralists such as Pospisil 1971, Moore 1973 and 1978 and Griffiths 2003. But in addition to the identification of overlapping legal authorities, the present study is also concerned with documenting in detail the continuous interaction of these legal authorities, their historical development and their empirical impact on lay perceptions and practices of law in archaic Greece. For legal pluralism see also Chapter I, n. 50.

23. Matthaiou 2006, 115-34 conjectures that the sixth-century law from Chios dealing with issues of land ownership and cultivation (see Chapter IV, n. 82) might have been issued by a local phratry; but the evidence is inconclusive.

24. Gaius libro quarto ad legem XII tabularum. sodales sunt, qui eiusdem collegii sunt, quam Graeci ἑταιρείαν vocant. his autem potestatem fecit lex pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant. sed haec lex videtur ex lege Solonis tralata esse. nam illuc ita est: ἐὰν δὲ δῆμος ἢ φρατόρες ἢ ὀργεῶνες ἢ γεννῆται ἢ σύσσιτοι ἢ ὁμόταφοι ἢ θιασῶται ἢ ἐπὶ λείαν οἰχόμενοι ἢ εἰς ἐμπορίαν ὅτι ἂν τούτων διαθῶνται πρὸς ἀλλήλους, κύριον εἶναι, ἐὰν μὴ ἀπαγορεύσῃ δημόσια γράμματα.

25. *Kadmos* 9 (1970), 118 (= *SEG* 27.631 = *Nomima* I.22). There has been a long debate (e.g. Jeffery & Morpurgo-Davies 1970; van Effenterre 1973; Beattie 1975; Edwards & Edwards 1974 and 1977; Gorlin 1988; R. Thomas 1992, 69ff. and 1995 68ff.; Vivier 1994) since the publication of the inscription regarding the exact meaning of the sanctioning formula and other clauses of this legal contract. The overall interpretation of the opening clause adopted here is plausible but not the only one possible. See further *Nomima* I, p. 106.

26. On the possible identification of Dattalla and a historical interpretation of the Spensithios contract, see Vivier 1994.

27. See van Effenterre 1973.

28. See *Nomima* I, p. 106 for a summary. Cf. also Rhodes 1997, 310.

29. The exact nature of ἀποκλεσία (possibly a subdivision of the citizenry or the total of those who received land in the areas specified by the law) is uncertain, but it was obviously a body with some power to amend or enact legislation.

30. Maffi 1988 is an excellent discussion and source of earlier bibliography.

31. Plu. *Lyc.* 6.1 and 8 (= *Nomima* I.61); see also Plu. *Lyc.* 6.10; D.S. 7.12.6. The date and purpose of the *rhētra* and the so-called Lycurgan reforms in general have been extensively debated and many points remain controversial. See e.g. Wade-Gery 1943 and 1944 (reprinted in Wade-Gery 1958, 37-85); Butler 1962;

Oliva 1966; Forrest 1967; Bringmann 1975; Lévy 1977; Welwei 1979; Ruzé 1991 and 2005; Nafissi 1991, 51-81; Pavese 1992; Parker 1993; Raaflaub 1993, 64-8; Ogden 1994; Thommen 1996; Musti 1996; Meier 1998, 186ff. and 2002; van Wees 1999 and 2002 (who downdates the Great *rhētra* to the sixth century); Cartledge 2001, 21-38; Maffi 2002; Vélissaropoulos-Karakostas 2005; Dreher 2006. The set of social and military reforms, often associated in ancient sources with the legendary Lycurgus, was in historical terms part of a series of social and institutional changes introduced in Sparta during the early archaic period, very probably in connection with the outcome of the Messenian wars.

32. The line is extremely garbled and other restorations are possible, such as ‹δ›άμω δ᾽ ἀγοραῖ ν‹ίκ›ην καὶ κράτος. Whatever the exact wording, there is little disagreement that this line assigned supreme decision-making power to the *damos*.

33. There have been various theories as to how this worked in practice. See among others Jones 1966 and Forrest 1967. On *probouleusis* in Spartan politics and lawmaking, see Andrewes 1954 and Sealey 1969.

34. See the arguments of Cartledge 2001 (originally 1980), 29-30; van Wees 1999, 20-2.

35. Once again, there have been numerous interpretations of this passage. See *Nomima* I.61, p. 260 for a summary and earlier bibliography.

36. Most legislation in archaic and classical Sparta was orally enacted and promulgated. See Chapter IV.

37. Besides the examples adduced below see also D. 23.62 quoting an alleged provision in Draco’s law on homicide against the amendment or annulment of the law by a magistrate or private citizen.

38. The interpretation of the last clause is problematic. It sometimes interpreted as an interdiction imposed upon the law-amending authorities of the previous clause to alter legislation no more than three times. See Osborne 1997, 75.

39. Harris 2006b, 309-10 argues that the harsh penalties envisaged in the entrenchment clauses against the amendment of some of the laws discussed here suggest an aversion of the Greeks towards legislative change. But if legislative change was rare and largely inconceivable, the frequency of such entrenchment clauses would be difficult to explain. For, even though some legislative authorities considered the adherence to specific laws vital and articulated this concern in the written version of these laws, the extensive references to the constitutional means whereby legislative amendment could be carried out as well as the threat of most severe penalties also suggest the existence of successful precedents of law amendment, which the entrenchment clauses were trying to prevent from occurring again. So if anything, these entrenchment clauses also point towards repeated attempts to alter existing legislation as well as an ideological struggle over the wider issue of the role, status and viability of civic law within some archaic communities.

40. Perlman 2002, 212. She also argues, p. 199 ‘Inscribed on the walls of the temple of Apollo Pythios, the Pythion laws might just as well be understood as

divine or oracular pronouncements rather than as legislative acts of the political community'. However, the references to gods in enactment formulas and the placement of written laws on the walls or in the vicinity of temples is not necessarily a reason to interpret them as disconnected (in a perceptual or practical sense) from civic legislative procedures. As Angelos Chaniotis has plausibly suggested (*SEG* 52.856), if his assertion (Chaniotis 1996, 83-5) that references to the gods in Hellenistic laws and decrees derive from the prayer rituals performed in the civic assembly is applied to the archaic period, 'then the invocation might in fact be an indication that the laws were enacted by the assembly'.

41. See e.g. *IC* IV 56; *IC* IV 72.IV.30-1; IX.23-4; XI.27-9; XII.1-5; *IC* IV 83 (= *Nomima* II.7 = *IGT* 157) . For more examples of cross-references to written clauses in laws from Crete (including Gortyn) and Greece in general see Hölkeskamp 2000, 86 and A. Chaniotis in *SEG* 47.1377.

42. See e.g. *IG* IX 1^2 3.609.13-14 (= *Nomima* I.44 = *IGT* 47 and 48) c. 525-500 from the border area of ancient Aetolia and Lokris, which in connection to some penalties makes a reference to the local, otherwise unknown, homicide law (τὸν ἀνδρεφονικὸν τεθμόν); *IvO* 3.5 (= *Nomima* I.108 = *IGT* 38), Elis, late sixth century, incorporates a reference to an 'ancient law' (τ]ὰ ζίκαια κὰ(τ) τὸ γράφος τἀρχαῖον).

43. This is suggested by a clause of the Gortyn Law Code (*IC* IV 72.V.4-6) which gives a starting date for the validity of a regulation: ὅκ' ὸ Αἰθ[α]λεὺς ϝταρτὸς ἐκόσμιον οἰ σὺν Κύ[λ]λ̣οι 'when the Aithalian *startos*, Kyllos and his colleagues, were serving as *kosmoi*'.

44. See on this point Gagarin 1991b, 89.

45. This is one of the main overarching arguments of the work by Hölkeskamp (1992a; 1992b; 1994; 2000; 2005) on archaic law. Besides the counter-arguments presented here, see also the references on Chapter I, n. 40 above.

46. But despite the untidy (to our eyes at least) nature of these codes, Davies also detects (see p. 126) thematic, linguistic and procedural links in the contents of laws presented as components of such larger collections of enactments (*IC* IV 72, *IC* IV 41 and *IC* IV 75) as well as similar links between these collections and some of the seemingly single enactments.

47. This last point is also made (in response to the arguments presented by Hölkeskamp) by Osborne 1997.

48. For the notion of the 'Rule of Law' and its implications in the study of ancient Greek law, see my remarks in Chapter I.

49. See Weyrauch & Bell 2001 for the example of law internally adopted in resident or itinerant Gypsy communities, often co-existing alongside formal nation-state law.

50. The dates, purpose of legislation and even the existence of some of the archaic lawgivers have been the subject of scholarly debate for decades. The details of this debate lie beyond the scope of this investigation, and I intend to pursue the subject of the archaic lawgivers in more depth on another occasion. For

my present purposes, suffice it to say that my examination of laws attributed to the lawgivers is limited to the ones that I believe have a high probability of being genuine because they correspond well with what we know about archaic Greek law from the extant archaic written statutes. On the archaic lawgivers in general see Adkock 1927; Mühl 1929 and 1933; Asheri 1963; Lavery 1974; Szegedy-Maszak 1978; Gagarin 1986, 51-80; Camassa 1996; Hölkeskamp 1999, passim; Vélissaropoulos-Karakostas 2002; Tourraix 2004; Fouchard 2005; Ruzé 2006. I have not been able to consult Lewis 2007 which appeared after the manuscript of this book was completed.

51. For the circumstances leading to Solon's appointment, his poetry and reforms, see in general Ruschenbusch 1966; Lavery 1974; Szegedy-Maszak 1978; Gallant 1982; Murray 1987; Gagarin 1986, 51-80; Rihill 1989 and 1991; Anhalt 1993; Raaflaub 1996; Schils 1991; Rosivach 1992, 2002a and 2002b; Matthiessen 1994; Foxhall 1997; E. Harris 1997; L'Homme-Wéry 1996a, 1996b, 1999 and 2005; Stanley 1999; Lewis 2001, 2004 and 2006; Noussia 2001; Lape 2002-3; Almeida 2003; Zunino 2004; Ste. Croix 2004, 5-128; Valdés 2005; Irwin 2005; Forsdyke 2005a, 90-101; Wallace 2007; and the various essays in Blok and Lardinois 2006. Needless to say, there are still many controversial issues (discussed in the preceding bibliography) regarding Solon's poetry and laws that lie outside the scope of the present monograph. In what follows I will discuss such issues only when they pertain to my argumemts.

52. For a recent assessment of the various sources for Solon's legislation and reforms see Rhodes 2006. Although I am largely in agreement with Rhodes' view that the *Athēnaiōn Politeia* and Plutarch's *Solon* (on which see also de Blois 2006) are for the most part reliable sources for Solon's laws, it should be noted that the issue is highly contentious and far from settled as the various studies in Blok & Lardinois 2006 suggest.

53. See also fr. 5 'I stood with a mighty shield cast around both sides and did not allow either to have an unjust victory'. It seems reasonable to interpret Solon's assertion in fr. 36.18-20 quoted above as a response to the criticism that his legislation was partial to one social class, even though he was invited to enact legislation on behalf of both. If that is the correct reading, then fr. 36.18-20 would be tantamount to an acknowledgment that the *kakoi* played a role in the appointment of Solon, and by extension influenced the shaping of his legislation. For θεσμός in Sol. fr. 36 see the Appendix.

54. See Page 1955, 149-243 for a discussion of all the so-called political poems of Alcaeus (for whose surviving poetry in general see Lobel and Page 1955). For the politics of aristocratic strife in archaic Mytilene see the bibliography in the following note.

55. For Pittacus' drinking law see also Arist. *Rh*. 1402b7; Plu. *Conv. sept. sap*. 155f.; D.L. 1.76. For the reign of Pittacus and social and political strife in archaic Mytilene in general, see Mazzarino 1943; Page 1955, 149-243; Romer 1982; McGlew 1993, passim; Kurke 1994; Hölkeskamp 1999, 219-26; Spencer 1995 and

2000; Visconti 2004. For tyranny in archaic Greece in general see Andrewes 1956; Berve 1967; Pleket 1969; Mossé 1969; Oliva 1982; De Libero 1996.

56. According to Ephorus *FGrHist* 70 F 139 (= Str. 6.1.8), Zaleucus modelled his legislation on the legal traditions of Crete, Laconia and the Athenian Areopagus (τῆς δὲ τῶν Λοκρῶν νομογραφίας μνησθεὶς Ἔφορος, ἣν Ζάλευκος συνέταξεν ἔκ τε τῶν Κρητικῶν νομίμων καὶ Λακωνικῶν καὶ ἐκ τῶν Ἀρεοπαγιτικῶν). For Zaleucus and his legislation see in general Mühl 1929, 105-24 (for the attempt in Mühl 1933 to attribute Zaleucus' laws to Near Eastern influences see Gagarin 1986, 62); Szegedy-Maszak 1978; Camassa 1986; Piccirilli 1987; van Compernolle 1976, 1981 and 1982; Gagarin 1986, 51-80; Link 1992; Brugnone 1992; Zunino 1998; Hölkeskamp 1999, 187-98.

57. On sumptuary legislation in archaic Greece see in general Ampolo 1984; Brugnone 1992; Engels 1998; Frisone 1994 and 2000; Kavoulaki 2005. Besides the lawgivers, instances of sumptuary legislation are sometimes attributed to entire communities, e.g. the law introduced by the Argives (Hdt. 1.82), accompanied by a curse, stipulating that no man should grow his hair and no woman should wear gold until they had recovered the location of Thyrea from the Spartans.

58. Charondas' expressed opposition to elaborate and misleading oratory in the courts (D.S. 12.16.4), although not without a link to archaic conditions (e.g. the evidence regarding the value of rhetorical skills in the administration of justice as described by Homer and Hesiod, see Chapter II), sounds more anachronistic and reflective of classical Athenian realities. For the laws of Charondas, see Mühl 1929, 432-63; Szegedy-Maszak 1978; Triantaphyllopoulos 1983; Gagarin 1986, 51-80; Hölkeskamp 1999, 130-44; Ciccia 2001.

59. Foxhall 1997, 120.

60. And the evidence examined in the following chapter suggests largely the same for the working of the courts of justice in some communities of archaic Greece.

61. See e.g. Gagarin 1986; R. Thomas 1995; Hölkeskamp 1999.

62. Herodotus documents this gradual trend towards ἰσονομίη ('equality before the law') in some parts of late archaic Greece. See 3.142 (Samos); 4.161 (Cyrene); 5.66-74 and 6.129 (Athens). Cf. also the advocacy of ἰσονομίη by the Persian Otanes in the so-called 'constitutional debate', 3.80. For social and political egalitarianism in archaic Greece see Robinson 1997; Raaflaub & Wallace 2007.

63. Eder 1986; Osborne, 1996, 186-90; Papakonstantinou 2002.

IV. Law in the Courts

1. In addition to social and political factors, the nature of the alphabetic script which consisted, on average, of roughly a couple of dozen symbols (compared to over 200 in Linear B documents) undoubtedly made the spread and learning of writing more accessible to many Greeks.

2. For the issue of possible anachronisms in [Arist.] *Ath.* 9.1 see e.g. Rhodes 1993, 159-62; and more recently Gagarin 2006b, 262. Ruschenbusch 1966 does not consider *ephesis* as a genuine part of Solon's reforms – he quotes [Arist.] *Ath.* 9.1 (F 40a) but only in relation to the right of *ho boulomenos* to intiate legal proceedings. But many scholars would accept the introduction of *ephesis* as an authentic Solonian measure, and rightly so. Nevertheless, the exact procedure implied by *ephesis* is disputed. See e.g. Gagarin 2006b, 263-4 who suggests, contrary to the view adopted here (for which see most recently Rhodes 2006, 255-6 with discussion of previous scholarship), that '*ephesis* was perhaps the transferral of a case from the authority of a magistrate to the court rather than an appeal to the court to retry a case decided by the magistrate'. This is not unlikely, although it seems to me that an interpretation of *ephesis* as appeal would be more in keeping with the suggestion in [Arist.] *Ath.* 9.1 that the *dēmos* had ultimate responsibility for the adjudication of lawsuits, and as a result became the master of the state. This is because during a process of appeal the popular jury not only administered justice but also potentially overturned the decision of a state official.

3. On literacy and orality in ancient Greece see Harris 1989; R. Thomas 1989 (focusing on Athens) and 1992 (but cf. Sickinger 1999); Pébarthe 2006 (for classical Athens). With particular reference to literacy, orality and law in archaic Greece see further below.

4. On this issue see also Chapter I, n. 17 and Chapter III.

5. The few examples of public written records from Sparta are discussed most effectively by Cartledge 2001, 39-54. See also Boring 1979; Millender 2001. As Cartledge 2001, 49 points out the Spartans 'dwelt primarily in a world of oral discourse'. For Spartan law in general MacDowell 1986 was the first attempt to deal comprehensively with the issue; for an assessment see Cartledge 1986. More recently Link 1994b deals with much the same material as MacDowell 1986. On some of the issues and problems associated with the study of Spartan law see now Maffi 2006.

6. On this point see Gagarin 1986, 53-4, n. 9; Nafissi 1991, 72. The ancient evidence on this issue has been recently reviewed by Millender 2001, 127-9. She maintains that in the seventh century Tyrtaeus already possibly had access to a written version of the *rhētra*, on the grounds that (a) there exists a close correspondence between Tyrtaeus' verses and the text of the original oracle, as reported by Plutarch; (b) the *rhētra*'s composition in prose and (c) the fact that the 'rider' reads like a written law, commencing with a conditional clause. Although there is a strong possibility that, contrary to other Spartan laws, the Great *rhētra* was eventually written down at some point in Spartan history, there is nothing to suggest conclusively that this occurred before the classical period. Millender's points (b) and (c) are not inconsistent with the possibility that the *rhētra* was written down long after Tyrtaeus (regarding Millender's point (b) see also Cartledge 2001, 30 for the possibility that the Great *rhētra* was originally composed in hexameters). As for point (a), it merely proves that the Great *rhētra*

predates Tyrtaeus, not that the latter was necessarily familiar with a written version of it. If the process of dissemination of information pertaining to politics and law in archaic and classical Sparta adumbrated here is accepted, it could be expected that an enactment of great importance such as the Great *rhētra* was frequently recited and discussed in various contexts, thus explaining the close familiarity with its contents that Tyrtaeus displays.

7. Millender 2001, 127-41 cautions that other factors, e.g. the possible use of perishable materials (most notably bronze) for inscriptions or the failure to discover the Spartan *agora*, might account for the dearth of written laws and other public documents before the Hellenistic period. Moreover, she suggests that the use of the written word in archaic and classical Sparta was more widespread than most scholars would admit, but she also accepts (in accordance with the argument developed here) that education and social interaction were important in the enculturation of citizens in matters of law.

8. ἔτι δὲ καὶ κρίσεών εἰσι μεγάλων κύριοι, ὄντες οἱ τυχόντες, διόπερ οὐκ αὐτογνώμονας βέλτιον κρίνειν ἀλλὰ κατὰ τὰ γράμματα καὶ τοὺς νόμους. Technically speaking this passage could be construed as implying that, even though written laws were in place, the ephors, acting irresponsibly, ignore them and decide on their own whim. Cf. Arist. *Pol*. 1272a38-9 where in connection with the Cretan *kosmoi* Aristotle makes the same claim (i.e. that they act on their own without any reference to written laws) using almost the same language. Yet, in light of the abundance of written legislation from archaic and classical Crete, a fact that Aristotle was certainly aware of, one could hardly argue on the basis of this passage that written legislation did not exist in Crete. In the case of the Spartan ephors however, and given the absence of written laws from Sparta (see next note) as well as the dearth of public written documentation, it is more likely that the emphasis of Aristotle's criticism in *Pol*. 1270b28-31 is on the fact that written legislation did not exist and not the ephors' negligence to act in accordance with it. For a different interpretation see Millender 2001, 133.

9. With the dubious exception of *IG* V 1.722, interpreted by Beattie 1958 as a *lex sacra*; but see the objections raised by Cartledge 2001, 52; Boring 1979, 30. Boring 1979, 30-1 also considers *IG* V 1.1155, found near Gytheion in southern Laconia, as a possible *lex sacra*. This difficult to decipher text appears to be a regulation against cutting stone from the local area or against defacing the sacred rock of Zeus Kappōtas mentioned by Pausanias (3.22) in connection with this region. Yet given the provenance of the inscription, it is doubtful whether it can be considered a law issued by the civic and/or religious authorities of the Spartan *homoioi* which constitute the focus of our present discussion.

10. See also Hdt. 1.65, arguing that before Lycurgus the Spartans were the worst-governed (κακονομώτατοι) of all Greeks but after Lycurgus' reforms they became well-governed (μετέβαλον δὲ ὧδε ἐς εὐνομίην. Cf. Hdt. 1.66, also with reference to Lycurgus, οὕτω μὲν μεταβαλόντες εὐνομήθησαν). And Hdt. 1.82,

containing a reference to a Spartan νόμος requiring men to wear their hair long; 6.72 and 6.86 for references to a Spartan court (δικαστήριον).

11. On Xenophon and Agesilaus see Cartledge 1987.

12. In the sense that the Athenian *polis* published during the classical period thousands of laws, decrees and other civic documents, many of which were accessible and visible by the population at large. However, and despite the abundance of written civic documents, many aspects of everyday life, including the conduct of litigation in the courts, were carried out without significant recourse to written texts. Hence it would be accurate to say that democratic Athens remained to some extent an oral society. See Thomas 1989. In relation to these issues, it is worth noting that a concept of unwritten law (*agraphos nomos*), encountered for the first time in Sophocles' *Antigone* 454-5 (a play produced in c. 442 BC) developed in classical Athens. Gagarin 1986, 122 uses the fact that all references to *agraphos nomos* occur in literature produced during and after the classical period, to bolster his argument for a fully developed legal culture in archaic Greece only after laws had been committed to writing (see Chapter III, n. 1). However, in classical Athens the idea of *agraphos nomos* emerges to a large extent as an articulation of the link between law and divine authority, a link attested for the archaic period as early as Homer and Hesiod. It would seem therefore that Athenians of the classical period, accustomed to largely equating state law with published written ordinances, developed the alternative concept of *agraphos nomos* to distinguish the divine connotations of law from its civic written manifestations. But for the citizens of archaic polities, who were no doubt more accustomed to the co-existing oral and written aspects of legal systems, the articulation of a notion of unwritten law would have made little sense. In other words, it appears that even though the concept of *agraphos nomos*, as developed in classical Athens, is conceptually cognate with ideas encountered in the archaic period, it is largely irrelevant regarding archaic perceptions and practices, especially the practice of committing laws to writing.

13. Some modern commentators encounter similar difficulties. For instance Boring 1979, 29 interprets Pl. *Lg*. 721E and 891, where a fictional Spartan character named Megillus discusses matters pertaining to written law without any objection, to mean that 'If it had been common knowledge that the Spartans still did not use written laws, Plato could easily have avoided a potentially absurd scene.' That argument would have been particularly strong if the *Laws*' main readership were the Spartans, but as far as we know that was far from being the case. In any event, Megillus' alleged familiarity with written law is at odds with the extreme dearth (if not complete lack, see n. 9) of extant instances of written law in archaic and classical Sparta that Boring himself acknowledges. Similarly, Gagarin 1986, 57 maintains that 'there is no evidence, however, to support the view that Sparta may have preserved a set of "laws" orally without inscribing them'. This view is conditioned by Gagarin's perception of writing as a

requirement for the emergence of a 'fully "legal" stage of development' (1986, 8). See Chapter III, n. 1.

14. For legal procedure and administration of justice in ancient Sparta MacDowell 1986, 123-50 collects and discusses all the relevant evidence. See also Bonner & Smith 1942; David 1985; Link 1994b; Richer 1998, ch. 24; Cartledge 2000. To be sure, the administration of justice in Sparta in the classical (and as far as one can tell, in the archaic) period was markedly different from that in other parts of Greece (e.g. Athens, Chios), particularly in that there was no popular judiciary. On this point see Ste. Croix 1972, 131-8 and 349-50. The lack of judicial power on the part of ordinary Spartans corresponds to the limited scope of the legislative authority of the Spartan *damos* in the Lycurgan *rhētra* (see discussion in Chapter III).

15. For the Spartan public messes (variously designated in the ancient sources as *phiditia*, *syssitia*, *suskania*, among others) see Hodkinson 1983, 251-4; 1997, 90-1; and 2000, passim, especially 216-18 and 356-8; Link 1991, 69-79; 1994, 9-29; and 1998; Nafissi 1991, passim, especially 173-226; Schmitt Pantel 1992, 60-76; Lavrenčic 1993; Thommen 1996, passim; Meier 1998, 170-83; Singor 1999. The importance of public messes in the process of internalization of civic values is also emphasized by Richer 2001, 33.

16. Most sources suggest that the Spartan state wished to present itself as being in control of the political discourse and all other means of verbal and nonverbal communication in the *agogē*, the *syssitia* and other contexts. See David 1999. The extent to which this ideal was achieved in practice is open to speculation. For the importance of informal conversation in Sparta outside the public messes see Cartledge 2001, 50.

17. The same doubt regarding the ability of average citizens to read and fully comprehend written laws can be raised with regard to other parts of archaic Greece. However, since many of the written laws outside Athens and Crete are isolated finds, and often we have little or no knowledge of the historical and social context that generated them, it is almost impossible to assess the impact of literacy on the reception of written law in most areas of archaic Greece. In that sense, the following arguments regarding the interaction between literacy, orality and law in Athens and the archaic communities of Crete are meant to be only indicative of conditions in other polities in archaic Greece. One hopes that future epigraphic discoveries will enable this debate to grow.

18. This thesis is repeated in several publications, including Stoddart & Whitley 1988; Whitley 1997 (also published in an abridged form as Whitley 1998). For the ideological and propagandistic function of Near Eastern law codes, as well as their role in transmitting common legal tradition see e.g. the remarks of Gagarin 1986, 132-5 and 2006a; Westbrook 1988 and 1990; Otto 2000 and other studies in Lévy 2000a; Charpin 2005.

19. The following comments on literacy, orality and law in archaic Crete are a

summary of the arguments I have presented more extensively in Papakonstantinou 2002. On this issue see also Perlman 2002; Chaniotis in *SEG* 52.822.

20. For literacy in archaic and classical Crete see Papakonstantinou 2002, where ancient testimonia are discussed in detail. Perlman 2002, 194-7 has independently reached similar conclusions. For an updated version of Perlman's (2002, 218-25) list of private (e.g. graffiti) inscriptions from archaic and classical Crete see A. Chaniotis *SEG* 52.822. The study of literacy in archaic Greek communities is hampered by various methodological and evidentiary problems. The various shades (e.g. 'functional', 'extensive', 'legal') of literacy, as detected by various scholars, are not always easily quantifiable, especially in relation to ancient societies, and their development usually depends on a number of conditions, mostly of local character. As a result, and similarly to all the issues examined in this book, generalizations regarding the entire archaic Greece should are avoided; instead, the present discussion takes as working hypothesis the perceived similarities in the use of the written word in parts of archaic Greece (as documented by extant inscriptions, see Jeffery 1990 and suggested by literary sources), including the commitment of laws to writing, the use of writing for informal and everyday purposes as well as the relationship between social class and literacy, in order to examine aspects of the interaction between writing, orality, literacy and law.

21. See *SEG* 49.2 and Langdon 2005. These graffiti, when fully published, will inevitably lead to a re-assessment of current orthodoxies regarding Athenian literacy in the archaic and classical periods. The degree to which such literacy skills could be translated into 'legal literacy' (a term suggested by Karen Rørby Kristensen in a private communication, see n. 22 below) is of course another matter. To what extent could we envisage the shepherd who scratched the graffiti on the rocks of Vari reading Solon's *axones* and then employing them for practical purposes (i.e. to settle a dispute)? Perhaps we will never obtain definitive answers to questions of this kind but the Athenian evidence seems to be largely in keeping with what is here argued for Crete (fairly adequate literacy skills on the part of the citizens, possibly limited consultation of laws and decrees by non-specialists and a functional legal system that could operate smoothly without a great dependence on the average citizen's level of literacy). The assertion that many Athenians of the late archaic/early classical periods possessed at least some basic literacy skills is corroborated in principle by the introduction of ostracism by Cleisthenes (or shortly afterwards). However, many extant ostraca were often written by a few individuals, suggesting that at times large numbers of ballots were prepared in advance and handed out before voting. See in general Siewert 2002.

22. Papakonstantinou 2002, 137-43. For the interplay between literacy, orality and law in archaic Greece see also the studies in Chapter III, n. 1. According to some late sources, at times laws in ancient Greece were put into song; see Piccirilli 1981; Camassa 1988; Ruzé 2001; Arnaoutoglou 2004, 2-4; Ellinger 2005. With particular reference to ancient Crete, in a private communication Karen Rørby

Kristensen agrees with the importance of oral aspects in judicial procedures and argues as well for a high degree of familiarity of the citizens of Cretan communities with written laws. However, she also suggests that many Cretans could achieve such familiarity through personally reading written laws (partially in opposition to my thesis that acquaintance with written law was primarily achieved not by reading, but with the help of specialized officials (e.g. *mnamones*) who read written laws aloud, through attendance of lawsuits in the *agora* and through informal interaction and discussion of political and legal matters in the public messes and other contexts). Furthermore, she qualifies the latter argument by pointing out that chronological and other factors (e.g. the relevance of a statute's subject-matter, such as property and inheritance, to a wider section of the population) could also influence the extent to which a written law could be widely read and understood.

23. For the *mnamon* in archaic and classical Crete see R. Thomas 1992, 69ff.; R. Thomas 1995, 66ff.; Ruzé 1988; Ghinatti 2004, 99ff. In the Gortyn Law Code *mnamones* are frequently mentioned as assistants to judges (e.g. *IC* IV 72.IX.31-2 where the judge and the *mnamon* are to provide testimony regarding the outcome of past cases αἰ μέν κα νίκας ἐπιμολεῖ, ὀ δικαστὰς κὀ μνάμον, αἴ κα δόει καὶ πολιατεύει, οἰ δὲ μαίτυρες οἰ ἐπιβάλλοντες 'if the lawsuit is with reference to a judgement won, the judge and the *mnamon*, if alive and a citizen, and the heirs as witnesses (shall testify)' (translation Willetts 1967, slightly modified); *IC* IV 72.XI.14-17 where a *mnamon* appears serving as an assistant to a judge or magistrate concerned with non-citizens ἀνθέμε[ν δὲ δέκ]ᾳ [σ]τατε̃ρανς ἐδ δικαστέριον, ὀ δὲ μνάμον ὀ το̃ κσενίο ἀποδότο το̃ι ἀπορροθέντι 'and he shall deposit ten staters with the court, and the *mnamon* (of the magistrate or judge?) concerned with non-citizens shall pay it to the person renounced').

24. Editio princeps by Jeffery and Morpurgo-Davies 1970; for more bibliography see Chapter III, n. 25.

25. Herodotus (3.123; 142-8) also records the case of Maiandrius, described as the γραμματιστής (scribe) of Polycrates of Samos. Maiandrius is presented as one of the closest associates of Polycrates whose responsibilities went far beyond the call of duty of a simple scribe. He was sent to missions abroad and even appointed by Polycrates as vice-ruler in Samos in Polycrates' absence (3.142).

26. Late sources are also indicative of the range of duties assumed by the *mnēmones* within the legal systems of various Greek *poleis*. Similarly to some archaic laws, a Hellenistic law from Paros (Lambrinudakis and Wörrle 1983) betrays great concern for the recording and preservation by the *mnēmon* of legal and other public acts. Moreover, in *Pol*. 1321b34-40 Aristotle points out that the responsibilities of the *mnēmones* included among others the registration of legal proceedings and the recording of court verdicts.

27. Rhodes 1993, 102, points out that, if one accepts that Draco gave Athens its first set of written laws ([Arist.] *Ath.* 41.2), then it is difficult to accept that among the duties of the *thesmothetai* before Draco was to record the legal decisions in

writing. Cf. also Gagarin 2003, 66, who is also largely dismissive of the passage. This view assumes a rigid understanding of law as written law without taking into serious consideration the possibility that oral and written aspects could functionally coexist. The participle ἀναγράψαντες which denotes the duties of the early archaic *thesmothetai* could very well be anachronistic, especially if we date the functions of the *thesmothetai* related to the preservation and transmission of law to a period before Draco, since in the present state of the evidence it is unlikely that Athenians used the written word so extensively in such an early period as to systematically commit laws in writing. Yet the passage might reflect a fourth-century interpretation of the fact that the *thesmothetai* had perhaps something to do with the oral recitation and preservation of the laws, possibly in a fashion similar to the *mnamones* in archaic Crete. Cf. also the comments by Sickinger 1999, 10-14 and Faraguna 2007, 81-2. For the possibility that the *thesmothetai* also adjudicated cases see Humphreys 1983, 233-4.

28. Ll. 40-7: ἀναγινωσκόντων δὲ τὰν στάλαν κατ᾽ ἐνιαυτὸν οἱ τόκ᾽ ἀεὶ κοσμόντες παρ᾽ ἑκατέροις ἐν τοῖς Ὑπερβώιοις καὶ προπαραγγελόντων ἀλλάλοις πρὸ ἁμερᾶν δέκα ἢ κα μέλλωντι ἀναγινώσκεν. ὁποῖοι δέ κα μὴ ἀναγνῶντι ἢ μὴ παραγγήλωντι ἀποτεισάντων οἱ αἴτιοι τούτων στατῆρας ἑκατόν, οἱ μὲν Ἱεραπύτνιοι κόσμοι τῶν Πριανσιέων ταῖ πόλει, οἱ δὲ Πριανσιέες Ἱεραπυτνίων ταῖ πόλει. Similar clauses are encountered in other Hellenistic documents from Crete, e.g. the treaty between Lato and Olous *IC* I XVI 5.25-30.

29. Besides the instances from Teos discussed above see also an inscription from Erythrai (*IvEr* I.1 and 17 = *IGT* 74, fifth century), where repeated tenure of the office of *grammateus* (secretary) was prohibited.

30. Such was the case of Spensithios, see above. Cf. also the *habeas corpus* law for the scribe Patrias from Elis (*IvO* 2 = *Nomima* I.23 = *IGT* 37, early fifth century).

31. Presumably concerning the law in question but perhaps with regard to other written laws as well. Brugnone 1997, 277, n. 41 points out the role of classical Athenian phratries in maintaining citizen registers.

32. For sung laws in ancient Greece see the references in n. 22 of this chapter. For commensality and other informal means of spreading knowledge of community laws see below.

33. See e.g. the trial on the shield of Achilles Hom. *Il.* 18.497-508: ‘the people were assembled in the market place’ (λαοὶ δ᾽ εἰν ἀγορῇ ἔσαν ἀρθρόοι); also Hesiod’s admonitions to his brother Perses ‘not to see and hear the quarrels in the *agora*’ (i.e. not to attend public trials, νείκε᾽ ὀπιπεύοντ᾽ ἀγορῆς ἐπακουὸν ἐόντα, *Op*. 29, implying of course that Perses usually did). On the public nature of archaic Greek law and courts, see further Chapter II.

34. There is an extensive bibliography on the aristocratic *symposion*. See e.g. Murray, 1983a, 1983b, 1990a and 1990b; Schmitt Pantel 1992, passim; Kurke 1999; Papakonstantinou 2003.

35. For the Cretan *andreia* see Willetts 1955, passim; Talamo 1987; Lavrenčic 1988; Link 1991, 118-24; Guizzi 1997.

36. One can also compare the public messes of the presiding members of the *boulē* in late archaic/early classical Athens, taking place at the *tholos*. The *tholos* was the location where the fifty *prytaneis* of the presiding tribe and the *aeisitoi*, i.e. various political functionaries such as the Secretary of the Boulē and the Dēmos and the Herald of the Boulē and the Dēmos, had their meals in classical Athens. According to the author of the *Athēnaiōn Politeia*, 'those among them (i.e. the Boulē) who are prytanizing first eat together (συσσιτοῦσιν) in the *tholos*, getting money from the city, then they assemble the Boulē and the Dēmos' ([Arist.] *Ath.* 43.3). Even though the extant remains of the *tholos* building in the Athenian *agora* date from the second quarter of the fifth century, it is not unlikely that the custom of common dining of the presiding members of the *boulē* originated with the reforms of Cleisthenes. For public commensality involving members of the *boulē* and other magistrates in ancient Athens see Schmitt Pantel 1992, 145ff.

37. Even though Dosiadas wrote centuries after the period under investigation here, it is reasonable to assume that, in the context of the largely politically independent Cretan communities of the early Hellenistic period, the nature of traditional institutions like the *andreia* would not have radically changed since the archaic and classical periods.

38. With particular reference to Crete Chaniotis 2005 suggested meetings in interregional sanctuaries such as the Idaean Cave or the sanctuary of Hermes in Simi Viannou as possible occasions where 'legal norms were discussed and developed' (p. 190). This is a plausible argument which can of course be extended to other interregional sanctuaries across the Greek world.

39. See H. Kuper 1963, 36-8 and for the Swazi in general H. Kuper 1961.

40. Gulliver 1969, 32.

41. See e.g. the studies in Nader 1969. The same pattern is also detected in the case of small, isolated and largely self-contained communities that constituted part of larger empires, e.g. the cases of the mid-sixteenth-century eastern Anatolian city of Aintab examined by Peirce 2003, the isolated area of Turfan, part of Tang China, during the seventh and eighth centuries studied by V. Hansen 1995 and the various indigenous communities in colonial Africa examined in Mann & Roberts 1991.

42. For gossip in classical Athens see Hunter 1990 and 1994, 96-119.

43. Perlman 2002, 207-8: '... the *kosmos epistas* was the official who happened to be assigned to a particular judicial proceeding of the sort treated by the law, perhaps in the capacity of judge or after the verdict as executor of the penalty or perhaps even more generally as the official assigned to oversee all phases of litigation'.

44. One might add to the evidence examined above that, in a clause of the Gortyn Law Code (*IC* IV 72.VIII.53-IX.1 = *Nomima* II.51) regarding the marriage of a heiress that has occurred against the provisions of the law, the lawful heirs are

to present the pertinent information to the *kosmos*, presumably in order for the latter to initiate legal proceedings: αἰ δέ τις ὀπυίοι τὰν πατροιῶκον, ἀλλᾶι δ᾽ [ἔγ]ρατται, πεύθεν̣ [πορ]τὶ κ̣ό̣σμ̣ο̣ν τὸνς ἐπιβά[λλοντανς. vac].

45. Perlman's suggestion (see above, n. 43), based on *IC* IV 14.g-p alone, that the ϙόσμος ὁ ἐπιστάς acted as a judge, although not implausible in principle, goes against the content of the clause in question which concerns the enforcement of a judicial decision and describes the layers of accountability among some state officials in a manner that is very familiar from other archaic laws from Crete and the rest of the Greek world. Hence what this provision proves is that the *kosmos epistas*, along with the *titas* (possibly an official supervising public finances), was involved in the enforcement of this law (of which *IC* IV 14.g-p is only a part), not that he was necessarily involved in the adjudication of trials resulting from it. It should also be pointed out that the most common meaning of ἐπίσταμι is 'to supervise, to lead' and therefore another plausible interpretation of ϙόσμος ὁ ἐπιστάς, besides the ones advanced by Perlman, would be 'the chief *kosmos*' (see Bile 1988, 266), i.e. what was in later periods called the πρωτόκοσμος. For the *kosmos epistas* cf. also the so-called 'Spensithios decree' discussed above (*Kadmos* 9 (1970), 118.A.16-17 = *SEG* 27.631 = *Nomima* I.22), which contains a reference to a ϙόσμ̣ος ἐπεστ̣αϙὼς but which unfortunately stands in isolation in too fragmentary a part of the inscription to allow us to reach any conclusions. Finally, with regard to the judicial responsibilities of the *kosmoi*, Perlman 2002, 210, also suggested as quite possible that the *ksenios kosmos* also had judicial responsibilities (presumably in cases involving non-citizens/κσενεία δίκα). For a thorough overview of justice practices concerning non-citizens in the Greek world, see Gauthier 1972; Bravo 1980.

46. The development of the Athenian constitution in general is of course a hotly debated issue which lies largely beyond the scope of this inquiry. For a presentation of the evidence and a reconstruction of the history of Athenian institutions, see in general Hignett 1952; Ostwald 1969; Andrewes 1982; Rhodes 1993. For my purposes I concentrate only on the judicial aspects of the archaic Athenian constitution and more specifically on the judicial duties of various magistrates and the archaic courts of justice.

47. See Rhodes 1993, 106.

48. Ruschenbusch 1966, F 16.

49. In another law attributed by Demosthenes to Solon (24.105) the Eleven, a board of gaolers and executioners in classical Athens, are described as having the power to put in prison and bring (εἰσαγόντων) the accused party before the Heliaia, after he has been prosecuted by any citizen (ὁ βουλόμενος). [Arist.] *Ath.* 7.3 also mentions the Eleven in connection with Solon. However, their role and even their existence at this early period have been disputed. But cf. Rhodes 1993, 139.

50. The restoration ἄρχοντας seems secure. See *IG* I^3 4; *Nomima* I.96, p. 343.

51. For Draco's law on homicide and other legislation in general see e.g. Ruschenbusch 1960; Stroud 1968 and 1979; Grace 1973; Gagarin 1981 and 1986,

86-9; Humphreys 1991; Tulin 1996; Carawan 1998; Schmitz 2001; Valdés 2004; Gagarin 2005c; Forsdyke 2005a, passim and especially 79-90.

52. See e.g. Wolff 1946, 70ff.; Stroud 1968, 31ff.; Gagarin 1981, 30ff.; Heitsch 1989; Thür 1996; Carawan 1998, 68ff. and passim, all with earlier bibliography.

53. [Arist.] *Ath.* 57.3 which mentions the Palladion as the court judging instances of unintentional homicide and intentional homicides of slaves, metics or non-citizens; the court at the Delphinium heard cases of lawful homicide; the court at Phreatto heard cases where a convicted killer already in exile might return to plead against charges of murder; and finally the court at the Prytaneum adjudicated homicide trials of unknown assailants or inanimate objects. For a discussion of the various homicide courts in Athens see Boegehold et al. 1995, especially 43-50. On Aristotle as evidence for Athenian law courts see Mirhardy 2006.

54. *Basileis* as civic officials are also attested in the sixth-century law from Chios (ML 8 = *Nomima* I.62 = *IGT* 61). Similarly to archaic Athens, their exact role is unknown.

55. On this point, see Gagarin 1981, 46-7; Carawan 1998, 69 and passim; Stroud 1968, 45-7 (advocating a different view), all with references to earlier literature. For a discussion of the judicial powers of the Athenian *basileis* see Gagarin 2000.

56. For the sixth-century law from Chios see Jeffery 1956; Ampolo 1983; Gagarin 1986, 89-91; Roebuck 1986; Ruzé 1985, 165-7; Hölkeskamp 1999, 80-6.

57. See also *IC* IV 45B for ὀρκιότερον as signifying to prevail by oath.

58. Sometimes even religious authorities could reach decisions with legal consequences. A remarkable example is the so-called 'Gottesurteil' from Mantineia (*IG* V 2.262.19 (= *Nomima* II.2 = *IGT* 34), an early to mid-fifth-century document characterized by its elasticity (in the sense of providing for different contingencies) in dealing with a serious criminal offence (homicide) while at the same time acknowledging the judicial authority of the religious establishment and the standing judicial officials. For this inscription see especially Thür & Taeuber 1994, 75-98; Chaniotis 1996, 75-9; Thür 1989b, 2002b and 2003.

59. E.g. *IC* I XVIII 3.A.2-3, Lyktos, late sixth century, δ]ικασταὶ; *GIBM* IV 886.20 and 26 (= *Nomima* I.19 = *IGT* 84), Halikarnassos, early/mid-fifth century, τὸς δικαστάς; *IC* IV 72.VI.53-4 (= *Nomima* I.13 = *IGT* 171), Gortyn, early/mid-fifth century, τὸν δικαστὰν; *IG* V 2.262.19 (= *Nomima* II.2 = *IGT* 34), Mantineia, Arkadia, early/mid-fifth century, οἱ δικασσταὶ; *IG* IX 1^2 3.718.32-3 (= *Nomima* I.43 = *IGT* 49), Khaleion, Lokris, early/mid-fifth century, τοὺς δικαστε͂ρας; *IEphesos* V 1678 B.1-2 (= *Nomima* II.14 = *IGT* 82) Ephesus, at times dated c. 500-475 BC (e.g. Jeffery 1990, p. 344, no. 55b; and pp. 339-40: 'may be dated provisionally in the first quarter of the fifth century') but downdated to after 400 by van Effenterre & Ruzé, *Nomima* II, p. 67, τοῖς δικάζοσιν.

60. See [Arist.] *Ath.* 16.5, διὸ καὶ τοὺς κατὰ δήμους κατεσκεύασε δικαστάς, καὶ αὐτὸς ἐξήει πολλάκις εἰς τὴν χώραν, ἐπισκοπῶν καὶ διαλύων τοὺς διαφερομένους, ὅπως μὴ καταβαίνοντες εἰς τὸ ἄστυ παραμελῶσι τῶν ἔργων.

'And for this reason he introduced the local judges, and often went to the countryside in person, inspecting and settling disputes, in order that men might not neglect their work by coming into the city'. As Humphreys 1983, 239 points out, the local judges might have been introduced as a result of complaints 'that men [i.e. responsible for administering justice in the civic centre of Athens] who lacked knowledge of local affairs could not produce satisfactory settlements'.

61. Laws often specified by what procedure judges were expected to reach a decision on a particular matter, e.g. after the testimony of witnesses or after swearing an oath. The most detailed information about court procedures comes, not surprisingly, from Gortyn, for which see Maffi 2003, 213-20. For judges and the technical and procedural aspects of adjudication in archaic Gortyn, see Talamanca 1979; Maffi forthcoming.

62. The document commonly known as the Gortyn Law Code (*IC* IV 72), the most extensive extant Greek inscription of the archaic and classical periods, has generated a significant output of scholarship since its discovery and publication in the late nineteenth century. In its present format the inscription dates to the first half of the fifth century (Polosa 2005) yet it is widely believed that, in addition to introducing some new statutes, it incorporates and/or amends, in some way or another, material whose origin can be traced back to the archaic period (see e.g. Willetts 1967, 8-9; Gagarin 1982; 1986, 96; Mandalaki 2004, 22; for examples of re-elaboration of material in archaic written laws from Gortyn see Davies 1996). The issue of codification, i.e. to what extent the Gortyn Law Code is a systematic compilation of legal norms, has also attracted much scholarly attention. For the purposes of the present study and for the sake of convenience I frequently refer to *IC* IV 72 as the Gortyn Law Code even though I concur with those who believe that some parts of it cannot be technically interpreted as codification. For codification in archaic Greece in general, see Pringsheim 1957; the various studies in Gehrke 1994; Camassa 1988 and 1994; Hölkeskamp 1999; various articles from Lévy 2000a; Vélissaropoulos-Karakostas 2002; Thür 2002a. For the composition of the Gortyn Law Code, an issue beyond the scope of the present study, see Bücheler & Zitelmann 1885; Headlam 1892-3; Lemosse 1957; Willetts 1967; Gagarin 1982 and 2001a; Davies 1996 and 2005; Lévy 2000b; van Effenterre & van Effenterre 2000; Maffi 1997 and 2003; Kristensen 2004. For various aspects of the social and political background of the Gortyn Law Code see Willetts 1955 and 1967; Gehrke 1993 and 1997; Link 1994a, passim; Maffi 1983 and 1997; Mandalaki 2004; Marginesu 2005; and the various studies in Greco & Lombardo 2005. Maffi 2003 offers an excellent comprehensive review of recent studies dealing with the Gortyn Law Code.

63. In addition to the κσενεία δίκα, cf. also the reference in archaic Gortynian inscriptions to a ϝαστία δίκα (*IC* IV 13.g-h = *Nomima* I.1; *IC* IV 64 = *Nomima* I.8) which further suggests that different statutory norms, and quite possibly different procedures and courts were available for the adjudication of legal cases involving citizens and non-citizens. For ϝαστία δίκα see also n. 98 below.

64. *Il.* 23.566-611; for an analysis see Chapter II.

65. See *Nomima* II, pp. 137-9 for bibliography. Similar references to arbitration crop up in later sources, e.g. a judicial curse of the fourth century BC from Athens which envisages a settlement either in a court or by arbitration (Audollent 1904, no. 49.18-19: καὶ ἐπ[ὶ δ]ικαστη[ρί]ου καὶ παρὰ διαιτητεῖ [ἐὰν] ἀντιποιῶσ[ι]. See also the studies cited in Chapter I, n. 30 and especially Hunter 1994 and Scafuro 1997; to all these studies add Chaniotis 2004, 31 for the possibility that priests acted as arbitrators for disputes in the Hellenistic world.

66. It should be pointed out that the exact legal status of arbitrations vis-à-vis settlements in court is not always clear. Perhaps arbitration was an option available only for the settlement of certain types of disputes. For the suggestion that public arbitrators (*diaitētai*) were introduced in late archaic Athens by Cleisthenes see Humphreys 1983, 240-2.

67. See references in n. 65 above.

68. Possibly implied in Hes. *Op*. 35-6; see discussion in Chapter II.

69. The popularity of mediation in international law regarding the settlement of disputes between city-states during the classical and Hellenistic periods reinforces the possibility that similar proceedings were widespread on the micro level as well. An instance of inter-state arbitration in the archaic period is provided by Hdt. 5.95 who maintained that Periander of Corinth served as arbitrator (διαιτητὴς) in the dispute between Athens and Mytilene over Sigeum.

70. Assuming, of course, that given the character and conditions of dissemination of early archaic poetry, the conditions of administration of justice described in Homer and Hesiod were fairly representative of early archaic Athens as well.

71. For the Areopagus in general and its judicial responsibilities in particular, see Wallace 1989; Thür 1991; Ostwald 1993; de Bruyn 1995; Ryan 1999; Valdés 2000 and 2002. The Spartan *gerousia* also possessed judicial powers but all the relevant evidence refers to the classical period, see MacDowell 1986, 126-9. It is plausible, however, that such powers were also present during the archaic period.

72. 3.6: 'the council of Areopagus had the official function of guarding the laws'; 4.4 'the council of Areopagus was guardian of the laws, and kept a watch on the magistrates to make them govern in accordance with the laws'; 8.4: 'he (i.e. Solon) appointed to the council of Areopagus as guardian of the laws, just as it had existed even before as overseer of the constitution'.

73. The date that the Areopagus assumed judicial responsibilities is disputed. Furthermore, and especially in connection with homicide law in archaic Athens as illustrated by Draco's statute and evidence provided by the *Athēnaiōn Politeia* and other late sources, the exact responsibilities of the Areopagus as well as of other courts (see n. 53) and various officials (e.g. *ephetai*, *basileis*) in adjudicating different types of homicide are the subject of scholarly controversy. See my discussion of the evidence regarding the adjudication of homicide in archaic Athens above. For our purposes, it suffices to ascertain the plurality of manifestations of judicial power among different courts and magistrates in archaic Athens.

74. *IC* IV 72.XI.26-31: τὸν δικαστὰν, ὅτι μὲν κατὰ μαίτυρανς ἔγρατται δικάδδεν ἒ ἀπόμοτον, δικάδδεν ἂι ἔγρατται, τῶν δ᾽ ἀλλῶν ὀμνύντα κρίνεν πορτὶ τὰ μολιόμενα. vac 'whatever it is written that he shall give judgment upon, either according to witnesses or under oath of denial, the judge is to give judgment as is written; but in other matters he shall decide under oath according to the pleas' (translation by Willetts 1967, 49). See also e.g. *IC* IV 72.I.11-12; 13-14; 23-4; 38-9. On judges' oaths, see Chapter V.

75. Discussed in more detail in Chapters III and V.

76. See for instance Davies 2005, 312 with reference to Gortyn.

77. A possibility advanced with regard to this passage in Chapter III.

78. See LSJ, s.v. ὄχλος; Chantraine 1968, vol. III s.v. ὄχλος.

79. In a private communication Angelos Chaniotis suggests that the term ὄχλος might allude to the method of voting by scream.

80. Oliver 1959, 300-1; Rhodes 1993, 160, n. 13; Gagarin 1986, 90-1.

81. Wade-Gery 1958, 198-9; Jeffery 1956, 164; Robinson 1997, 97; Hölkeskamp 1999, 83. See also Chapter III, n. 17.

82. A law of the second half of the sixth century BC from Chios (originally published in 1890 but was overlooked since then; rescued from oblivion by Matthaiou 2006, 115-36) refers to the *agorē* (C, 3-6 ἀγο[ρ]|ὴ μὴ [τ|ι]θῆται | Αἰωλ[.]), possibly in the meaning of convening an assembly (cf. *Od*. 9.171) for a legal purpose or function, but the context is too fragmentary to allow any firm conclusions.

83. Cf. also Hipponax 132 West ἄδηκε βουλή.

84. For the *Heliaia* in archaic and classical Athens see Hommel 1927; Hansen 1981-2; Ostwald 1986 passim. Given the present state of the evidence I am inclined to agree with those (e.g. Ostwald above) who believe that the *Heliaia* was the popular assembly functioning as jury court.

85. The timocratic classes constitute another hotly debated issue in Solonian scholarship with many commentators challenging the traditional narrative presented by the *Athēnaiōn Politeia*. See most recently van Wees 2006 and Raaflaub 2006 with bibliography.

86. For the significance of the participation of the lower classes in the administration of justice as a result of the reforms of Solon see also Plu. *Sol.* 18.2-3; Arist. *Pol*. 1273b35-1274a5.

87. In addition to the right of *ephesis*, in the same passage the author of the *Athēnaiōn Politeia* identifies as features of Solon's *politeia* that were extremely favourable to the people (δημοτικώτατα) the prohibition of mortgaging oneself (μὴ δανείζειν ἐπὶ τοῖς σώμασιν), and the possibility for anyone who so desired to secure punishment in favour of the injured party (τὸ ἐξεῖναι τῷ βουλομένῳ τιμωρεῖν ὑπὲρ τῶν ἀδικουμένων). The former is of course related to the specific economic circumstances and social crisis that Solon addressed in his reforms. The latter is largely acknowledged as the inception of the system of

graphai in Athenian law (see Osborne 1985). On prosecution by ὁ βουλόμενος in archaic Athens see further below.

88. See *Nomima* I.109, pp. 386-7 and Hölkeskamp 1999, 105 with previous bibliography.

89. A, 10-22: Ἐπανάστα[σ]ιν οὐ βολεύσω οὐδὲ ποιήσω οὐδὲ λυ[ή]σω ο[ὐ]δὲ διώξω ο[ὐ]δὲ [χρ]ήμ[α]τα δημιώσ[ω οὐ]δὲ δήσω οὐδὲ κατ[ακ]τε[ν]έω ἂμ μὴ σ[ὺ]ν [δι]ακοσ[ί]ο[ισιν ἐν Τ]έωι | [ἢ] πλέοσ[ι]ν [κ]αὶ ἂμ μὴ ὑπ[ὸ] πόλεω[ς] ν[ό]μο καταλαφθέν[τ]α ἐν δὲ Ἀβδή[ρ]οισιν [σ]ὺμ π(ε)ντακο[σ]ίοισιν ἢ πλ[έο]σιν.

90. One can assume that similar provisions regarding the selection of the juries in trials conducted at Oiantheia were included in the copy of the decree set up there.

91. The size of the jury in accordance with the monetary value of the claim at stake in a lawsuit has a parallel in the size of popular juries in private suits in classical Athens; see [Arist.] *Ath.* 53.3.

92. *IG* IX 1^2 3.717.B: Αἰ κ᾽ ἀνδιχάζοντι τοὶ ξενοδίκαι ἐπομότας hελέσ|το ὁ ξένος ὀπάγον τὰν δίκαν ἐχθὸς προξένο | καὶ ϝιδίο ξένο ἀριστίνδαν ἐπὶ ταῖς μναιαίαις καὶ πλέον πέντε καὶ δέκ᾽ ἄνδρας ἐπὶ ταῖς | μειόνοις ἐννέ᾽ ἄνδρας. Αἰ κ᾽ ὁ ϝασστὸς ποὶ τὸν ϝ|αστὸν δικάζεται κα<τ>ᾶς συμβολᾶς δαμιοργὸς | hελέσται τὸς hορκομότας ἀριστίνδαν τὰν πε|ντορκίαν ὀμόσαντας τὸς hορκομότας τὸν αὐτὸ|ν hόρκον ὀμνύεν πλεθὺν δὲ νικε῀ν. Further on this decree see *Nomima* I, p. 220 with earlier literature. For the *damiorgoi* in the Greek world in general see Veligianni-Terzi 1977.

93. Perhaps the point Plutarch and his sources wanted to make was that, given the gravity of the situation resulting from the assassination of Cylon and his co-conspirators, the court in question and the procedure of jury-selection were extraordinary.

94. The law also stipulates that these twenty-seven citizens serving in the jury had to swear the same oath as the members of the *bolē* (A, 18-20 ὀμόσαντας τὸν αὐτὸν ὅρκον τῆι βολῆι), suggesting that the jurors were not *bouleutai*. If standard coinage is envisaged, the timocratic qualification of thirty staters appears to be very low and can hardly be taken as a safeguard against corruption. Is this a way of saying that eligibility to the jury was open to almost anybody? Van Effenterre & Ruzé (*Nomima* I.106, p. 378) suggest that the decree refers to currency in electrum which had an intrinsic value significantly higher than regular silver coinage. If that was indeed the case, in practice it would have significantly elevated the timocratic qualification and restricted the potential pool of jurors. The issue remains open.

95. Hom. *Il.* 18. 497-508; *Op*. 29 and Chapter II above. For the archaic Greek *agora* in general see Kolb 1981; Hölscher 1998.

96. For other possible instances of legal dependence between neighbouring communities see the discussion of the ‘Spensithios decree’ in Chapter III; and *IvO* 16, discussed in Chapter V. See also Hdt. 5.83, who claims that at some unspecified time (presumably in the early archaic period, if the story is accurate)

Aegina was dependent on Epidaurus and that the Aeginetans were 'crossing over to Epidaurus and there were getting, and giving one another, justice' (καὶ δίκας διαβαίνοντες ἐς Ἐπίδαυρον ἐδίδοσάν τε καὶ ἐλάμβανον παρ᾽ ἀλλήλων οἱ Αἰγινῆται).

97. In the sense that attendance of such proceedings was open to all interested audiences.

98. For a reference to ϝαστίαν δίκαν see also *IC* IV 64.4, an early fifth-century law from Gortyn bestowing privileges upon a non-Gortynian. A ϝαστία δίκα in archaic Gortyn was normally reserved for citizens with full rights. See also *IC* IV 80 (= *Nomima* I.7), the early fifth-century decree between Gortyn and Rhittenia discussed above. In the opening clause the Rhittenians are euphimistically designated as independent and self-regulated in terms of justice (αὐτ]όνο̣μ[ο]ι κ᾽ αὐτόδικοι), but at a later point the decree stipulates that lawsuits (presumably in a Gortynian court) involving Rhittenian magistrates shall be adjudicated according to the law for non-citizens (l. 8, κσενεία[ι δί]και δικάδδεθαι).

99. Draco's law *IG* I³ 104.20-1 (= *Nomima* I.02 = *IGT* 11): προειπεῖν δ]ὲ τοῖ κ|τέν̣αν̣[τι ἐν ἀ]γορ[ᾶι μέχρ᾽ ἀναφσιότετος καὶ ἀνεφσιο͂]; *IG* I³ 4.A.6-7 (= *Nomima* I.96) Athens, 485/4 BC: πρᾶχσιν δ[ὲ ˚ε]ν̣αι π[ρὸς] τ̣ὸς τρε͂[ς ἄρχοντας τὸς] ἐν ἀγορᾶι; law from Phaistos, sixth century, *editio princeps* Di Vita and Cantarella 1978 (= *SEG* 32.908 = *Nomima* II.39): ---ἀποϝ]εῖπαι ἐν ἀγορ[ᾶι---; *IC* IV 72.X.34-6 (= *Nomima* II.40 = *IGT* 180) Gortyn, early/mid-fifth century: ἀμπαίνεσθαι δὲ κατ᾽ ἀγορὰν | καταϝελμένον τ̃ομ πολιατᾶ|ν ἀπὸ τ̃ο λάο ὸ ἀπαγορεύοντι; *IC* IV 72.XI.10-14 (= *Nomima* II.40 = *IGT* 180) Gortyn, early/mid-fifth century: αἰ δ[έ καλεῖ] ὸ ἀνπανάμενος, ἀποϝειπαθθο κατ᾽ ἀγορὰν ἀπὸ τ̃ο λά[ο ὸ ἀπα]γορεύοντι καταϝελμένον τ̃ον πολιατᾶν; *IC* IV 75.A.7-8 (= *Nomima* II.46) Gortyn, mid-fifth century (see text below); *IC* IV 81.7-11 (= *Nomima* II.47 = *IGT* 155) Gortyn, mid-fifth century: αἰ δέ κα μὲ εἴει καλίον[τι ᾶι] ἔγρατται, αὐτὸς μετρέθο τε καὶ προπονέτο προτέταρ[τον ἀν]τὶ μαιτύρον δυ̃ον παρέμεν ἐνσ ἀγοράν (text identical to *IC* IV 75 above; for the duplication of clauses in *IC* IV 81 and *IC* IV 75 see Davies 1996, 48-50). See also *IC* IV 9 (= *Nomima* II.78 = *IGT* 119*) a late seventh-century fragmentary law from Gortyn which includes two references to the ἀγρήιον that can be probably identified with the location where the civic army was mustered and a clear reference to adjudication (c-g: ἢ δ̣ίκ[ας] δ[ι]κάζε̣[ν]). Most commentators (e.g. Koerner, *IGT* 119*; van Effenterre & Ruzé, *Nomima* II.78) agree that in this case the ἀγρήιον indicates a public location where adjudication occurred. It should be noted that in many cases (including some of the examples adduced above) where legal proceedings occur in the *agora*, it is not clear whether reference is made to a location or the actual popular assembly. But this uncertainty does not significantly affect the point made here regarding the public nature of adjudication.

100. It is debated whether Solon permitted anyone who so wished (ὁ βουλόμενος) to initiate legal proceedings related to any matter or only in those instances when the injured party could not bring suit themselves. The latter has

over the years emerged as the most accepted interpretation. See e.g. Glotz 1904, 371-2; Ruschenbusch 1968, 48-53; Rhodes 1993, 160; Gagarin 1986, 73 and most recently Gagarin 2006b, 263. In the same essay Gagarin argues, rightly in my opinion, that procedural clauses in Draco's law on homicide and in some of Solon's reforms (the clause enabling ὁ βουλόμενος to intiate legal proceedings; the clause establishing the right to appeal [*ephesis*]; the law allowing impeachment [*eisangelia*]; the *dike exoulēs* [law for ejectment]; and the law on theft) 'encouraged more citizen participation in the legal process' (p. 274).

101. E.g. *IC* IV 21.2 (= *Nomima* II.38 = *IGT* 123) Gortyn, mid-sixth century BC; *IC* IV 41.II (= *Nomima* II.65 = *IGT* 127) Gortyn, early fifth century BC; *IC* IV 72.I.1-55 (= *Nomima* II.6 = *IGT* 163) Gortyn, early/mid-fifth century BC; *IC* IV 72.III.46-7 (= *Nomima* II.34) Gortyn, early/mid-fifth century BC; *IC* IV 72.IX.24-40 (= *Nomima* II.45 = *IGT* 175) Gortyn, early/mid-fifth century BC; *IC* IV 72.IX.43-54 (= *Nomima* II.76 = *IGT* 177) Gortyn, early/mid-fifth century BC; *IC* IV 72.XI.26-8 (= *Nomima* II.4 = *IGT* 181), Gortyn, early/mid-fifth century BC; *IC* IV 81 (= *Nomima* II.47 = *IGT* 155) Gortyn, mid-fifth century. For the role of witnesses in archaic Gortyn see Gagarin 1984 and 1989. For judicial testimony in archaic Greece in general see also Pringsheim 1951. For a similar interpretation to the one adopted here regarding the role of witnesses in the context of the classical Athenian justice system, see Humphreys 1985b.

102. On this passage see Papakonstantinou 2007a.

103. The numerous judicial curses against litigants and witnesses also highlight the importance of the latter in the judicial process. For judicial curses, see further in the next chapter.

104. Suggested for archaic Crete by van Effenterre 1991, but Gagarin 1991b rightly objects that the point is not proven by the evidence van Effenterre adduces. However, van Effenterre's suggestion is very appealing and fits what we know about law and litigation in the communities of archaic Crete.

V. Law in Everyday Life

1. Sarat & Kearns 1993a, 7-8.

2. Much of what was said above regarding the panhellenic outlook of Homer and other archaic poetry applies also to Theognis. See Chapter II and n. 9 below.

3. See the discussion in Chapter II above. McGlew 1993, 88-91 has also noticed the parallels in the treatment of the theme of Justice between Solon and Hesiod.

4. Real or perceived is of course a different matter: a litigant who suffers a defeat in court is bound to have grievances and might see the process as unfair and corrupt. But the fact that the voices raising concerns about the integrity of the courts multiplied during the late archaic period warrants investigation.

5. Besides the literary sources, the persistent attempts in extant archaic laws examined below to prevent negligence on the part of judges and magistrates also suggests that concern over this issue was widespread.

6. For Solon's legal terminology see further in Appendix.

7. For the purpose of convenience throughout this book I use the terms 'Theognis' and '*Theognidea*' interchangeably to denote the corpus of elegies attributed to the Megarian poet, despite the uncertainties regarding their composition and authorship. See further below.

8. Material in the following section on Theognis has been previously discussed in Papakonstantinou 2004a.

9. Given my acceptance of the arguments regarding the panhellenic appeal of the *Theognidea* (see below), it is of no consequence for my purposes if the original Theognis was from Megara in mainland Greece or Megara Hyblaea in Sicily.

10. For ancient testimonia on Theognis, see 'Theognis' *RE* VA, 1972-84 and Ewen Bowie, 'Theognis' in *DNP*, vol. 12.1, Stuttgart 2002, 351-4. For a survey of earlier literature on the Theognidean question see Gerber 1991 and 1997b.

11. I.e. mid/late-sixth century; see most recently Lane Fox 2000.

12. Nagy 1985, 33.

13. On the issues of composition and performance of some archaic poetry and its significance for the study of archaic law, see also my comments in Chapter I. On the composition of the *Theognidea* see also Kurke 1999, 27-8 and 2000, 62.

14. Given the method of composition of the *Theognidea*, one can consider the entire corpus as reflective of wider patterns and not only those verses that refer to Kyrnos and which are regarded by some scholars as poems written by the original Theognis.

15. For attempts to interpret the *Theognidea* in the context of the internal political conditions in sixth-century Megara see Lane Fox 2000; and van Wees 2000, where the author argues for a mafia-style aristocratic ethos in Theognis' Megara. For the political history of Megara in the period in question, see Legon 1981, especially 104ff.; Figueira 1985; Robinson 1997, 114-17 who argues (p. 114) that sources depict sixth-century Megara as a 'radical and violently lawless popular regime in which the *demos* used its supreme power to victimize the rich'; Forsdyke 2005b (who denies, contra Robinson 1997, the existence of a democratic regime in sixth-century Megara). Stein-Hölkeskamp 1989, 86-93 and 134-8, argues that Theognis portrays a new canon of aristocratic values more in tune with the collective sensibilities and interests of the *polis*. See also Stein-Hölkeskamp 1997.

16. See in general Cerri 1968; Stein-Hölkeskamp 1997. Along the lines of social divisions between *agathoi* and *kakoi*, Theognis emphasizes the themes of friendship and camaraderie and their implications for social life at large. See Konstan 1997, 49-52 who offers the best (albeit short) analysis of friendship in Theognis in the context of class divisions and social conflict.

17. Note that verses 43ff., referring to the crooked practices of the base after they take hold of power in the city, immediately follow a segment (39-42) in which Theognis castigates the fall of the nobles to a condition of 'baseness' (κακότητα). For a possible identification of the *kakoi* in section 43-52 see n. 23.

18. For the city as a ship metaphor, cf. also 855-6.

19. Saunders 1991, 49-50 was right to point out that Theognis expresses his dissatisfaction with the apathy of Zeus and the lack of intervention on behalf of the *agathoi* who suffer injustice. However, what this attitude implies is that Theognis too implicitly subscribes to the view that perceives justice and the gods as interconnected.

20. It is not clear, although it is certainly not implausible, whether the historical Theognis ever served in this capacity.

21. Duplicity is frequently associated in the *Theognidea* with the declining state of friendship, an important institution for archaic Greek aristocracy. On the themes of friendship and duplicity in Theognis see n. 16 and Donlan 1985a. For the Greek aristocracy in general during the archaic period see Stein-Hölkeskamp 1989; Fouchard 1997; Duplouy 2006.

22. Thgn. 541-2; 603-4; 1103-4.

23. [κακοὶ] … δίκας τ᾽ ἀδίκοισι διδῶσιν οἰκείων κερδέων εἵνεκα καὶ κράτεος, 45-6; it is quite interesting that in this passage Theognis asserts that the same *kakoi* ruin the *dēmos* (δῆμόν τε φθείρωσι), suggesting that some *kakoi* are populist leaders but not necessarily of low-class origin themselves. Cf. also 947-8.

24. 145-8; 197-202; 465-6; 677-9; 748-52; 753-6. Cf. also 825-30 referring to mortgaged land.

25. See 50-2; cf. also 667-82.

26. *Op*. 221, 250, 261-4.

27. For judicial oaths in archaic Greece, see further in the next section below.

28. For perceptions of oaths and oath-taking among the Greeks Hirzel 1902 is still useful. For oaths in the administration of justice, see Bonner & Smith 1938, vol. II, 145-91; Plescia 1970, 33-57; Mirhady 1991; Gagarin 1997. With particular reference to the communities of archaic and classical Crete, legal inscriptions are particularly helpful in elucidating various aspects of procedure, including the role of oaths. For oaths in the legal system of archaic Gortyn, see Headlam 1892-3; Willetts 1967, 33-4. For witnesses and their oaths in the Gortyn Law Code see Gagarin 1984 and 1989.

29. *IG* XII 9.1973-1974 (= *Nomima* I.91 = *IGT* 72-3). For the sixth-century laws from Eretria see Vanderpool & Wallace 1964; Cairns 1991.

30. E.g. *IC* IV 8.e-f (= *Nomima* II.11 = *IGT* 118), ἐπόμοτον (‘to regulate by oath’), Gortyn, late seventh century; *Et. Thas*. III.1954, no. 7.9 (= *Nomima* II.96 = *IGT* 66), oath of ignorance, Thasos, early fifth century BC; *IC* IV 72.XI.46-50 (= *Nomima* II.16 = *IGT* 166), Gortyn, early/mid-fifth century; *GIBM* IV 886.16-18 (= *Nomima* I.19 = *IGT* 84), Halikarnassos, c. 475-450 BC; *IG* IX 1^2 3.718.44-5 (= *Nomima* I.43 = *IGT* 49), Lokris, c. mid-fifth century BC. *IC* II XII 3 (= *Nomima* I.10 = *IGT* 109*) from Eleutherna (end of sixth century BC) mentions oath-taking (l. 2, κὄρκον τιθέμεν) and an imprecation which was part of an oath (l.3, τõι δὲ ὄρκ]οι τὰν ἀρὰν ἰνήμε[ν ---), but is otherwise too fragmentary to be of any use. Cf. also *IC* I IX 1.B.44-6, Dreros, third century BC, δικᾶν δὲ καὶ πρ[αξί]ων μηθὲν ἔνορκον ἢ(μ)ην. It is sometimes thought (e.g. Guarducci in *IC* I,

pp. 84 and 87) that this inscription is in its entirety a copy of an archaic text. But cf. van Effenterre & Ruzé *Nomima* I, pp. 198-201, who believe that only ll. D.144-64 might be of archaic origin. Numerous other examples could be adduced.

31. See e.g. *IC* IV 28 (= *Nomima* II.12), Gortyn, early sixth century, ἀπόμοσεν, 'to deny by oath'; *Nomima* II.15, Eleutherna, mid-fifth century, ἐκ(σ)ομνύηι 'to clear by oath'; *IC* IV 72.IX.54 (= *Nomima* II.76 = *IGT* 177), Gortyn, early/mid-fifth century, ἀπομόσαι, 'to deny by oath'; *Et. Thas.* III.1954, no. 7.9 (= *Nomima* II.96 = *IGT* 66), Thasos, c. 480-460, νηιδίης ὅρκος, 'oath of ignorance'.

32. See e.g. *IC* IV 42.B (= *Nomima* II.5 = *IGT* 129*), end of sixth century, Gortyn (stipulating that on certain occasions, the oaths of the judge and the *mnamon* shall settle the case); *IC* I X 2.8 (= *Nomima* II.80 = *IGT* 94), Eltynia, early fifth century (referring to a *kosmos* acting as judge); *IC* IV 72.XI.26-31, Gortyn, early/mid-fifth century (the judge is to decide under oath in those instances where the letter of the law does not envisage the circumstances of a particular dispute).

33. On the hypothetical scenario that an oath-challenge was accepted and as a result the opponent of the litigant who formulated the oath-challenge was acquitted, then we could say that the opponent in question had effectively sworn a purgatory oath (see above). That oath-challenges had been used since early archaic Greece to settle disputes is suggested by the Menelaus v. Antilochus dispute in *Il*. 23.566-611 (for which see further Chapter II above). For the use of judicial oaths in archaic Greece, besides the discussion that follows, see also Chapters III and IV above.

34. *IC* IV 51 (= *Nomima* II.13 = *IGT* 139).

35. See for instance the detailed provisions contained in the Gortyn Law Code, *IC* IV 72.XI.46-50 regarding the oath of a wife divorcing from her husband.

36. For witnesses and their oaths see further below. Other references to judicial oaths are found among the earliest extant laws from Gortyn e.g. *IC* IV 4.3 (= *Nomima* II.61 = *IGT* 117), Gortyn, late seventh century, which refers to fellow oath-takers -- τõ]ι ὀμομόται and alludes to oath-taking of several witnesses. Cf. also *IC* I XVIII 5.13, Lyktos, sixth century, ὀ]μομότας. *BCH* 61 (1937), 334 (= *Nomima* I.81 = *IGT* 90) from seventh-century Dreros also includes a reference to an oath, but, as has been argued in Chapter III, it is not likely that this oath was sworn in a judicial context.

37. Not necessarily sworn in connection with circumstances described in other sections of the same law.

38. Although doubts have been raised in the past (e.g. Latte 1920, 14-15) regarding the identity of oath-swearers in ll. 11-15, in recent years many scholars have argued (e.g. van Effenterre & Ruzé, *Nomima* II, p. 172; however, these scholars argue for a different interpretation of the content of the oath than the one adopted here) that, as it is suggested strongly by the context, the witnesses swore the oath in question. See also Gagarin 1989, 51-2 who convincingly argues that accidental witnesses (i.e. witnesses who were occasionally called to testify on a fact or an aspect of a dispute that they happened to know or observe. These were

different from formal witnesses who were officially summoned by litigants to attest a procedural or contractual act, and were then called to testify about that act in court) were in all probability called to swear the oath in ll. 11-15. There remains the issue of the possible relationship between the witnesses who were called to swear the oath in ll. 11-15 and the nine neighbours (ll. 2; 19-20) who were summoned as witnesses and oath-swearers to the case in other sections of the law. It is very likely that οἰ π̣[λίες ὀ]μόσαντι of l. 16 were selected from the ranks of the nine, who, after they were presented with the facts of the case, were requested to swear on behalf of either litigant. Their odd number could help reach a majority of witnesses willing to swear for a litigant.

39. *IC* IV 45.B.3-4 clearly specifies that the oath shall be imposed on one of the litigants (in this case the ἐνεκυράκσαντ̣[α) and, if sworn, is to prevail (as argued by Martini 1999, 392ff.); cf. Van Effenterre & Ruzé, *Nomima* II, p. 172, who also argue that ὀρκιότερος designates the litigant who had to swear the decisive oath. Gagarin 1997, 126 translates ὀρκιότερος as being given 'preference in oath' and argues that 'this presumably means that his testimony is worth more than that of a contrary witness', implying perhaps that both witnesses were to swear an oath. I do not know of any evidence in support of Maffi's suggestion (2003, 217) that ὀρκιότερον designates the litigant and/or witness whose oath was chosen by the judge (as opposed to being designated by the law) as determinant of the outcome of the trial. What all these theories (except perhaps Gagarin's) have in common is the assumption that only one of the parties (and not both, in order to avoid perjury by the other; see discussion of *IC* IV 81 above) swore a decisive oath. The choice of who was to be the ὀρκιότερος in certain circumstances seems to depend, at least in part, on the assessment of which of the litigants and his witnesses were less likely to commit perjury. For other instances of ὀρκιότερον compare also e.g. *IC* IV 41.II.12-14 (= *Nomima* II.65 = *IGT* 127), Gortyn, early fifth century: ὀρκιότερον ἤμην αὐτὸν καὶ τὸνς μαίτυρανς αἰ ἐπεδίετο ἢ ἐπέλευσε ἢ ἐκάλη δεικσίον.; *IC* IV 72.II.15-16 (= *Nomima* II.81 = *IGT* 164), Gortyn, early/mid-fifth century: ὀρκιοτέραν δ᾽ ἔμεν τὰν δόλαν; *IC* IV 72.III.49-52 (= *Nomima* II.34), Gortyn, early/mid-fifth century: ὀρκιοτέροδ δ᾽ ἔμεν τὸς καδεστὰνς καὶ τὸς μαίτυρανς, αἰ ἐπέλευσαν; *IC* IV 72.IV.6-8 (= *Nomima* II.35), Gortyn, early/mid-fifth century: κὸρκιότερον ἔμεν τὸν ἐπελεύσαντα καὶ τὸς μαίτυρανς. A judge and the *mnamon* can also be designated as ὀρκιότερον, *IC* IV 42.B.5-6 (= *Nomima* II.5 = *IGT* 129*), Gortyn, end of sixth century, ὀρκιότερον ἤμην τὸν δικαστὰν καὶ τὸμ μνάμονα. In Gortyn witnesses were at times expected to swear their oaths in front of specialized officials called ὀρϙομόται (*IC* IV 8.I, Gortyn, end of seventh century) or in front of the judge hearing the case (*IC* IV 45.B.5-6; *IC* IV 72.XI.48-50).

40. Cf. *IC* IV 41.V.7-11 (= *Nomima* II.65 = *IGT* 128), Gortyn, c. end of sixth century, where in the absence of witnesses a judge can decide a case on his own oath: αἰ δὲ πονίοι μὴ κελομένο, τὸν δικασστὰν ὀμνύντα κρίνεν, αἰ μὲ ἀποπονίοι μαίτυρς; *IC* IV 42.B.5-6 (= *Nomima* II.5 = *IGT* 129*), Gortyn, c. end

of sixth century, where the oaths of the *mnamon* and the judge shall prevail in deciding a case: ὀρκιότερον ἤμην τὸν δικαστὰν καὶ τὸμ μνάμονα; *IC* I X 2.8 (= *Nomima* II.80 = *IGT* 94), Eltynia, early fifth century, where a *kosmos*, acting as a judge, shall decide on his oath: κόσμος γ[ι]γνόσκεν ὀμνύντας. For oaths of judges see also *IC* IV 72.II.55-III.1 (= *Nomima* II.30), Gortyn, early/mid-fifth century; *IC* IV 72.III.15-16 (= *Nomima* II.30), Gortyn, early/mid-fifth century; *IC* IV 72.V.42-4 (= *Nomima* II.49 = *IGT* 169), Gortyn, early/mid-fifth century; *IC* IV 72.VI.53-5 (= *Nomima* I.13 = *IGT* 171), Gortyn, early/mid-fifth century; *IC* IV 72.IX.21 (= *Nomima* II.51), Gortyn, mid-fifth century; *IC* IV 76.B.4-7 (= *Nomima* II.86 = *IGT* 150-1), Gortyn, early/mid-fifth century. Numerous other examples of oaths by judges could be adduced. Promissory and evidentiary oaths were of course widely used by magistrates outside strictly legal contexts (i.e. upon assumption of office or with regard to accountability procedures).

41. van Effenterre & van Effenterre 1994, 8, point out that it is possible for two litigants and their supporters to swear contradictory oaths while at the same time upholding, in their own minds, the truth. While this is in principle true, it is by the same token impossible, as the testimony on judicial oaths by Hesiod and Theognis and some of the epigraphic evidence examined above demonstrate, that factually contradictory oaths could be considered simultaneously trustworthy by all involved parties and the judicial authorities. In the mind of the legal adversaries and the judges or juries, if two or more contradictory oaths are sworn over the same issue, then one or more of these oaths must be evasive or misleading at the very least or constitute outright perjury.

42. E.g. Ruschenbusch 1966, 85; Harrison 1971, 99, n. 2; Gagarin 1997, 127-8 and 2006b, 268-9.

43. Largely following Bonner & Smith 1938, vol. II, 161, who argued that the oaths in question were sworn during the litigants' pleadings and not during the trial.

44. For the process of ἀντωμοσία in classical Athens see Harrison 1971, vol. II, 99-100. In classical Athens, litigants also swore at the beginning of private (and quite possibly also of public) lawsuits to 'speak to the point' ([Arist.] *Ath.* 67.1). See Rhodes 2004.

45. See also *Op.* 189-94 where, in the process of bemoaning the conditions of life during the present age of iron, Hesiod predicts that in the future 'there will be no appreciation for a man who keeps his oath (εὐόρκου) nor of a just man nor of a good man, but they will rather praise the evil-doer and violence. Justice will be by force and there will be no reverence and the wicked will hurt the better man by speaking with crooked words, and he will swear a false oath (μύθοισιν σκολιοῖς ἐνέπων, ἐπὶ δ' ὅρκον ὀμεῖται)'; and *Th.* 231-2: 'Oath, who brings most grief to men on earth, when anyone knowingly swears falsely (ἐπίορκον)'. Cf. Hom. *Od.* 19.395-6 where Autolycus, Odysseus' grandfather, is described as one who excelled all men in thievery and oaths (ὅς ἀνθρώπους ἐκέκαστο κλεπτοσύνῃ θ' ὅρκῳ τε), implying that deceitfulness is as necessary a skill in oath-taking as it is in stealing. According to the scholium in

Od. 19.396 (cf. also Eust. *ad Od.* 19.396 [1870-1]) this passage alludes to an ὅρκος σοφιστικός, for which see n. 51 below.

46. We do not have to assume that all these literary references to breaches of oaths refer to judicial oaths (although the context very often strongly suggests so). But they nevertheless do reflect wider concerns over the issue of *epiorkia*. For oaths in archaic Greek literature see Giordano 1999.

47. Cf. also Hdt. 1.153 where Cyrus allegedly retorted to a Spartan warning not to harm any Greeks, that he did not fear 'men who have a place set apart in the middle of their city (ἐν μέσῃ τῇ πόλι) where they deceive each other with oaths (ἀλλήλους ὀμνύντες ἐξαπατῶσι)'. One might also add to this dossier of literary sources the law against false testimony attributed to the archaic lawgiver Charondas (Arist. *Pol*. 1274b5-7; see above, Chapter III). Since, as I have already pointed out, in many parts of archaic Greece testimony in court was validated by oath, the law of Charondas might essentially amount to a law against perjury (on this point see recently Hall 2006, 131 who translates the Aristotelian passage in question as 'suits against those who perjure themselves'). Beyond the archaic world, it is not surprising that the concern over the integrity of oaths persisted in later periods as well. Plato, *Lg.* 948b-949c provides an illuminating account of the extent and implications of perjury, pointing out that while many lawsuits are going on in the *polis*, almost half of the people who regularly meet each other at the *syssitia* and in other public and private contexts, commit perjury (ἐπιωρκηκότας). Theognis implies that similar conditions existed in some late archaic communities as well. Finally see also Chaniotis 1997, especially 362 and 374, and Chaniotis 2004, 33-4 for references to instances of perjury in confession inscriptions of the Hellenistic and Roman periods.

48. I intend to evaluate in more detail the evidence that the *Hymn to Hermes* provides for archaic legal procedures in a forthcoming article (Papakonstantinou 2007a).

49. E.g. Janko 1982, 143 dates the extant version of the hymn towards the end of the sixth century BC. However, it is quite plausible that the hymn in question, similarly to other archaic poetry, was orally composed and recited at least since the early archaic period, before finally being committed to writing at some later date. See Janko 1982, 149-50. In addition, it has been argued that the poem was performed in a panhellenic or regional cultic context (see Johnston 2002, who argues for one of the Hermaia festivals; but see Clay 2006, 7 who suggests the early archaic *dais* and the later *symposion* as possible contexts of recitation and performance of the hymn). If the *Hymn to Hermes* was indeed performed in a cultic context, as is very possible given its content, then the performative context would suggest a wider audience, with all the implications that such a contingency would entail for our understanding of the legal themes that emerge in the poem. Cf. my comments on archaic poetry as a source for archaic legal narratives in Chapter I above.

50. There are some textual problems associated with verses 378-86. I follow the traditional reading by Allen 1912 against a recent reconstruction by West 2003 which makes the crux of Hermes' oath in verse 383 not his self-proclaimed innocence but rather his refusal in 385-6 to compensate Apollo in the future, even though the latter is stronger. If West's emendations are accepted, then verses 384-6 would constitute a promissory oath and Hermes would therefore not be risking committing perjury on the facts of the case (on that point, see also next note). However, Allen's reading is preferable overall because it is much closer to the manuscript tradition (especially the *consensus codicum* on καί at the beginning of l. 385*)*, compared to West's rather bold emendations. Cf. also Radermacher 1931, who retains l. 385 as an independent clause and therefore provides a text that is in keeping with the interpretation advanced here.

51. For sophistic oaths in the Greek world see Wheeler 1984. An example of a sophistic interpretation of an oath is given in Hdt. 4.154. Etearchos, king of Axos in Crete, had been persuaded by his second wife to devise ill against his daughter from his first marriage. After befriending a merchant called Themison, Etearchos made him swear that he would perform any service that he (i.e. Etearchos) desired. As soon as the oath was sworn, Etearchos delivered to Themison his daughter and asked him to take her away and throw her into the sea. Themison was upset for being deceived in the matter of the oath (τῇ ἀπάτῃ τοῦ ὅρκου); he took the girl and sailed away, and when they were in the open sea, in order to absolve himself of the oath he had sworn to Etearchos, he bound her with ropes, let her into the sea and then drew her up again.

52. The same evidence also buttresses the arguments of Gagarin who has maintained (1997) that the oath-challenge was a readily available (although not necessarily always the first choice) forensic strategy in settling disputes.

53. Provisions against the breach or other abuse of oaths also appear in treaties between two independent *poleis*. Such treaties were legally binding and had implications for the legal status of the citizens of the communities involved. For an example of a provision against the breach of an oath in an interstate treaty, see *IvO* 10 (= *Nomima* I.51; see also Taita 2004-05) from Elis, found at Olympia and dating from the early fifth century, which is a peace and friendship agreement between the Anaitians and Metapians (possibly the inhabitants of small communities in the area around Olympia). This treary includes a final clause stipulating that, if one of the contracting parties violates the terms of the treaty sealed by oath, then the *hiaromaoi* (priests in Olympia) shall judge the matter: αἰ τὸ[ν] ὄρκον παρβαίνοιαν, γνόμαν τὸρ ἰ[α]ρόμαορ τ᾽ Ὀλυμπίαι.

54. For the fragment of the second copy see Davaras 1960, 457-8 and *Nomima* II.5, pp. 40-1 (= *SEG* 23.585).

55. Gagarin 1986, 81-6. Perlman 2002, 210 suggests that the sixth-century Gortynian law on iteration (*IC* IV 14.g-p.2 = *Nomima* I.82 = *IGT* 121) which bans the appointment of the same individual to the office of *kosmos* for three years might have had a similar objective: '... it is likely that in the sixth century the

kosmoi and the *ksenios kosmos* adjudicated disputes and that the laws on iteration were intended to limit judicial corruption, perhaps, in particular, corruption involving the payment of fines'. See also the comments in Perlman 2002, 213. Given the judicial powers of the *kosmoi*, Perlman's interpretation is plausible, although I would still be more inclined to suggest (as I did in Papakonstantinou 2002) that intra-aristocratic strife for political power was a major cause of the restrictions on the access to executive offices attested in *IC* IV 14.g-p.2 from Gortyn and *Nomima* I.81 (= *IGT* 90) from Dreros. On this topic, see also Link 2003; Chaniotis 2005, 180-1. As *IC* IV 72.V.5-6 suggests, at least in Gortyn in the late archaic/early classical period a system of rotation of *startoi* (tribal subdivisions, very probably the members of a tribe at arms, see Kristensen 2002) has largely replaced the ban on iteration of ex-*kosmoi* attested in the *IC* IV 14.g-p.2, possibly in an attempt to wrest total control of the highest magistracies from the most powerful individuals and their families.

56. For other examples of clauses against negligence by magistrates and judges in Gortynian laws see *IC* IV 9.c-g (= *Nomima* II.78), ἢ δ̣ίκ[ας] δ[ι]κάζε[ν] ἢ ἀ̣ϝ̣τὸ̣[ς] κατα[---, late seventh century, very possibly an early clause against a negligent judge or magistrate with judicial responsibilities. See van Effenterre, 1991, 86, who restores κατα[στάσαι---. Another case in point is possibly *IC* IV 22B (= *Nomima* II.84 = *IGT* 104 πρόθεσιν | μήτ᾽ ἀ[πο]δ̣ικάζαι | μήτ᾽ ἀπομ̣[όσαι), a fragmentary inscription dated to the mid/late sixth century. Even though it is clear that the clause delimits the rights of adjudication, the context is far from certain, and any interpretation largely depends on the meaning of πρόθεσις. According to R. Koerner, *IGT* 104, this is a clause against the breach of enacted laws by judgment or oath. But other interpretations are possible; see *Nomima* II, pp. 308-9 for a recent discussion and earlier bibliography. Further instances of negligence or malpractice by judges and magistrates in the laws of Gortyn include *IC* IV 14.g-p.1 (= *Nomima* I.82 = *IGT* 121), Gortyn, early sixth century, containing provisions against the *kosmoi* and the *titai* (officials responsible for overseeing the financial dealings of the *kosmoi*) who fail to enforce the payment of fines imposed in the law (-- πεντήϙοντα λέβη[τας ϝ]εκάστο καταστᾶσαι. ϙόσμος ὸ ἐπιστάς, | αἰ μὴ ἐστείσατο, ἀ̣ϝ̣τ̣[ὸν ὸ]πήλεν | καὶ τὸν̣ τ̣ίταν | αἰ μὴ ᾽στείσαιτο, τ[ὰν διπλέαν --). Similarly, *IC* IV 78.7-8, Gortyn, mid-fifth century, stipulates against the *titai* who fail to secure the payment of fines (αἰ δ᾽ οἰ τίται μὲ ϝέρκσιεν ἃι ἔγραται, τὰν διπλείαν ἄ[ταν ϝέκαστον αὐτῶν τῆι μ]εμπομένοι ἀποδόμεν καὶ τᾶι πόλι θέμεν); and *IC* IV 80.9-12 (= *Nomima* I.7), an early fifth-century decree from Gortyn regulating various legal matters between Gortyn and the dependent community of Rhittenia, which stipulates that the *kosmoi* of Rhittenia shall be responsible for enforcing fines related to offences regarding sureties, and that, if they fail to do so, the elders (πρειγίστοι) of the city shall make the *kosmoi* pay the specified amounts. See also *IC* II XII 11.4 (= *Nomima* I.14 = *IGT* 112*), a fragment of a sixth-century law from Eleutherna which includes provisions, very

possibly against judges or magistrates, who do not administer justice (μὴ δικάζοντας).

57. For a discussion of various aspects of this law see Chapters III and IV.

58. Perhaps a board charged with overseeing public finances.

59. Another example of provisions against potentially negligent magistrates from Elis is *IvO* 4 (= *Nomima* I.24 = *IGT* 39), late sixth century, which stipulates against negligent *theokoloi* and perhaps the *hiaromaos*. Finally, a fragment of an early sixth-century law from Elis (Siewert 1994 and 2000) also includes clauses regulating the administration of justice and possibly provisions against negligent judges (l.5), but the text is too fragmentary to allow any firm conclusions.

60. Dated to 463-460, see Duchene 1992.

61. Ll. 10-13: πρ[ησσ]όντων δὲ οἱ ἀρχοὶ ἐπ᾽ ὧν ἂν ποιῆι: ἂν δὲ μή, αὐτοὶ ὀφελόντων: τὴν θωιὴν διπλησίην τῶι θεῶι καὶ τῆι πόλι; ll. 47-9: πρ-ησσ[σ]όντων ἐπιστάται καὶ τῶμυσυ αὐτοὶ ἰσχόντων -: ἂν δὲ μή, διπλήσιον ὀφελόντων τῆι - ᾽Αρτ[έ]μιδι τῆι Ἑκάτηι.

62. For more examples of sanctions against magistrates in archaic Greece see Koerner 1989; Osborne 1997; Harris 2006b, 305-8.

63. See Eder 1986. Although Eder is right in pointing out the critical role of the aristocracy in the promulgation of archaic law, he downplays the contributions of other social groups in lawmaking and the administration of justice. Cf. Osborne, 1996, 186-90 who sees intra-elite struggle for power and influence as a major stimulus besides the emergence of written law. Such views are not necessarily incompatible with the picture of law as contestable and subject to negotiation between *all* social groups (including the *dēmos*) advanced in the present book. Aspects of intra-aristocratic conflict and competition in archaic Greece are also discussed in Forsdyke 2005a.

64. The term σύνδικοι in *defixiones* should be widely understood to mean all those who were associated with or assisted the legal adversary who was the target of the curse. In this sense, the σύνδικοι of the an opponent should be considered as a synonym of ἀντίδικοι, a term encountered in some other judicial *defixiones*, of the *defigens* (e.g. Jordan 1985, no. 12). For the σύνδικοι in judicial *defixiones* and other texts see Andriolo 2002; Brugnone 2007, 75-81.

65. Cf. Jordan 1985, no. 108, of the same location and date, and apparently containing the same curse formula.

66. On this *defixio* see further Jordan 1987 and Chaniotis 1992.

67. For more examples of judicial curses see Wünsch 1897; Audollent 1904; Lopez Jimeno 1991; Costabile 2001.

68. E.g. Wünsch 1897, no. 39, 20-2 (Athens, possibly fourth century): καὶ τοὺς τούτων συνδίκο(υ)ς πάντας καὶ φίλους. Cf. Wünsch 1897, no. 103, 8 (Athens, possibly fourth century): καὶ σύνδικοι καὶ [ε]ἴ τις ἄλλος [φίλος.

69. See e.g. Wünsch 1897, no. 94, 15-17 (Athens, possibly fourth century): καὶ ἡτ(τ)ᾶσθαι Διοκλ(ῆ)ν ἀπ᾽ ἐμο(ῦ) ἐν παντὶ δικαστ(η)ρίωι.

Conclusion

1. See e.g. Gagarin 1986; R. Thomas 1995; Hölkeskamp 1999.
2. See Robinson 1997; Raaflaub & Wallace 2007.

Appendix

1. For the nomenclature of law in archaic and classical Greece, including Athens, see e.g. Hirzel 1907; Ehrenberg 1921; Andrewes 1938; Heinimann 1945; Jones 1956; Erasmus 1960; Ostwald 1969; de Romilly 1971; Giraudeau 1984; Dihle 1995; Gschnitzer 1997; Hölkeskamp 2000.

2. Both terms of course have several other connotations. The most significant non-legal (strictly speaking) connotation of *nomos* in classical Athens is 'custom'. In a way, the entire Herodotean *Histories* can be read as a meditation on the shifting nuances of *nomos* in the Greek communities and foreign nations. Perhaps the most prominent example of the Herodotean relativism of *nomos* is to be found in Hdt. 3.38 where Herodotus remarks that 'if it were proposed to all nations to choose which seemed best of all customs (νόμων), each, after examination, would choose their own'. For the use of *nomos* in Herodotus see Giraudeau 1984, 122-6. For other evidence regarding the various meanings of θεσμός and νόμος in the archaic and classical periods see the bibliography in previous note and especially Ostwald 1969; Gschnitzer 1997; Hölkeskamp 2000.

3. Most forcefully argued by Ostwald 1969.

4. Ostwald 1969, 18-19 'the author of most of the θεσμοί is a person or agency, divine or human, who is thought of as standing apart and above those on whom the θεσμοί are imposed, and the position of respect accorded to that agency makes the thing imposed something especially inviolable for the recipients, something that has an obligating character for them ... If we apply this to the sense of "statute", we may conclude that θεσμός is a law given by a lawgiver who is thought of as standing apart from and above the persons upon whom his law is binding.' One should note the reference in Herodotus to Peisistratus respecting the θέσμια upon assuming power for the first time in Athens (Hdt. 1.59 ἔνθα δὴ ὁ Πεισίστρατος ἦρχε ᾽Αθηναίων, οὔτε τιμὰς τὰς ἐούσας συνταράξας οὔτε θέσμια μεταλλάξας; cf. the quotation in [Arist.] *Ath.* 16.10 of the preamble of the law against tyranny, allegedly valid at the time of Peisistratus θέσμια τάδε ᾽Αθηναίων καὶ πάτρια 'these are the ordinances and ancestral customs of the Athenians') and the θεσμοθέται ([Arist.] *Ath.* 3.4) discussed in Chapter IV.

5. Ostwald 1971, 55: 'νόμος looks upon a statute as an expression of what the people as a whole regard as a valid and binding norm'. For *nomos* in archaic and classical literature and legislation see also Ehrenberg 1921; Heinimann 1945; Laroche 1949, especially 163-219; Quass 1971; Giraudeau 1984, 115-35; Gschnitzer 1997.

6. Hölkeskamp 2000.

7. Similarly, *nomos* had other meanings beyond statutory law. See n. 2.

8. This is not to be understood in an evolutionary sense, i.e. I do not wish to argue that with the introduction of Solonian *thesmoi* and their echoes of social compromise the old meanings of *thesmos* were eclipsed, but rather that the various meanings of the term co-existed. This argument is not new: Jones 1956, 33-4 has pointed out that 'θεσμός, especially in its form τεθμός, seems to have implied what was set down, *whether unilaterally from above or consensually through agreement*, either as a more or less comprehensive system from which other rules might be deduced or as an isolated ordinance' (emphasis added).

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